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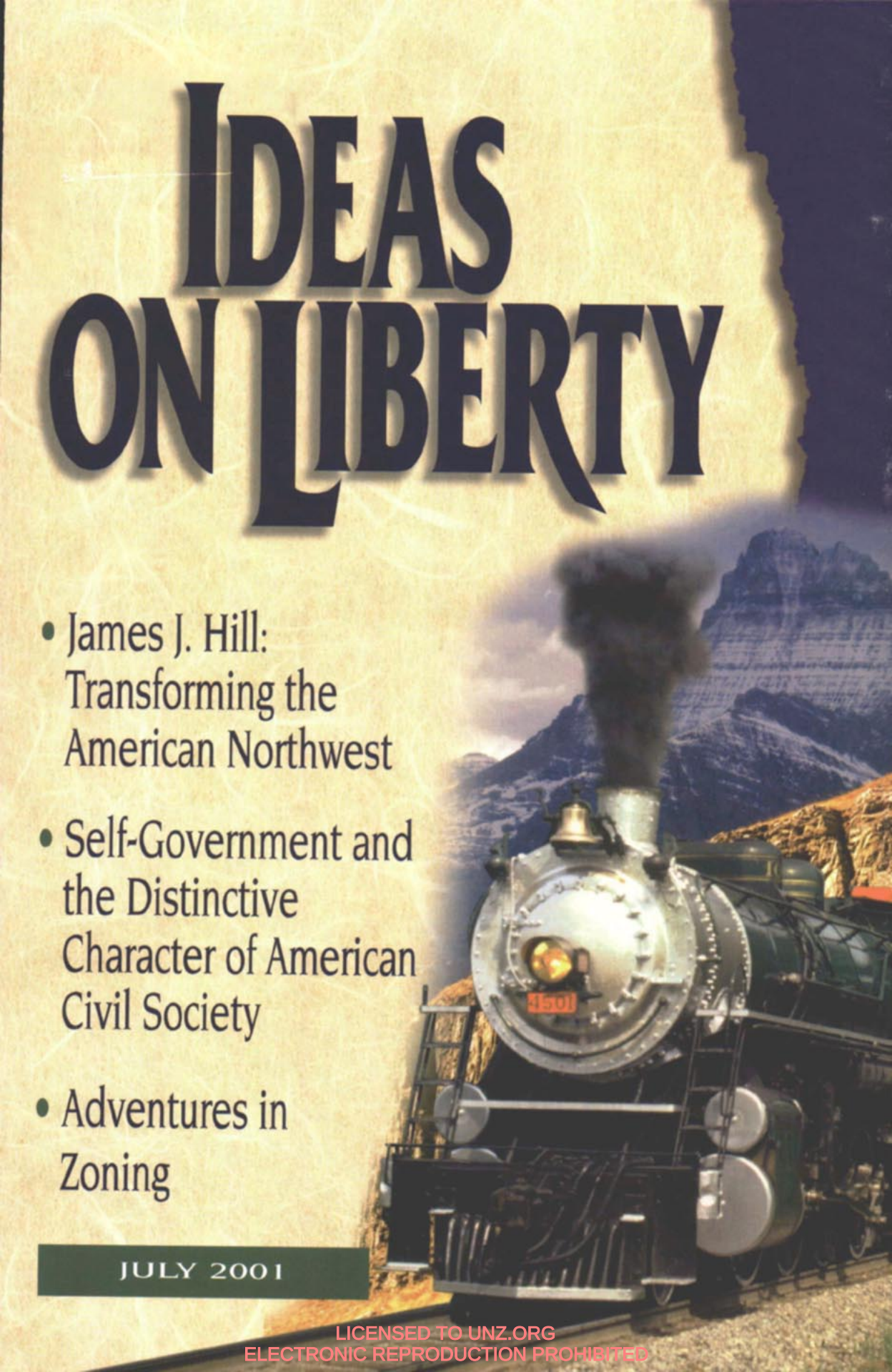

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July 2001 Vol. 51, No. 7

FEATURES

8 **Self-Government and the Distinctive Character of American Civil Society** *by Hans Eicholz*

15 **The Smart-Growth Scam** *by H. Nathan Hart and Paul Cleveland*

21 ***Sunshine* and the 21st Century** *by Matthew Hisrich*

25 **Drastic Measures: The Metric Assault on American Standards** *by Peter Seymour*

30 **Rights in Ideas Infringe Rights in Tangible Property** *by Ilana Mercer*

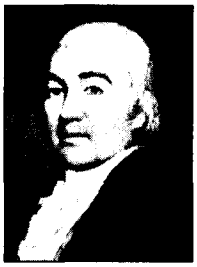
35 **Adventures in Zoning** *by Andrew P. Morriss*

38 **"A Race to the Bottom"** *by Barry Loberfeld*

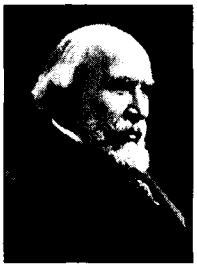
40 **The Steps to Economic Freedom** *by Christopher Lingle*

44 **James J. Hill: Transforming the American Northwest** *by Daniel T. Oliver*

49 **Deposit Insurance versus Branch Banking: The S&L Debacle** *by Larry Schweikart*



Noah Webster



James J. Hill

COLUMNS

4 *THOUGHTS on FREEDOM*—**The "A" Word** *by Donald J. Boudreaux*

13 *IDEAS and CONSEQUENCES*—**Prohibition Hasn't Ended Yet** *by Lawrence W. Reed*

23 *POTOMAC PRINCIPLES*—**Balkan Stupidities** *by Doug Bandow*

33 *THE THERAPEUTIC STATE*—**The Bought Mind** *by Thomas Szasz*

42 *ECONOMIC NOTIONS*—**Reducing the Cost of Reducing Pollution** *by Dwight R. Lee*

53 *ECONOMICS on TRIAL*—**Where Are the Best Schools in Austrian Economics?** *by Mark Skousen*

63 *THE PURSUIT of HAPPINESS*—**Lifestyle Nazi Update** *by Walter E. Williams*

DEPARTMENTS

2 **Perspective—Honesty at Last** *by Sheldon Richman*

6 **Capitalists Should Love the Estate Tax? It Just Ain't So!** *by Aeon J. Skoble*

55 **Book Reviews**

Karl Marx: A Life by Francis Wheen, reviewed by Antony Flew; **Julian Simon and the Triumph of Energy Sustainability** by Robert L. Bradley, Jr., reviewed by Richard W. Fulmer; **To America's Health: A Proposal to Reform the Food and Drug Administration** by Henry I. Miller, reviewed by Daniel B. Klein; **Egalitarianism as a Revolt Against Nature and Other Essays** by Murray Rothbard, edited by David Gordon, reviewed by George C. Leef; **Irrational Exuberance** by Robert J. Shiller, reviewed by David L. Littmann; **"That's Not What We Meant to Do": Reform and Its Unintended Consequences in Twentieth-Century America** by Steven M. Gillon, reviewed by Philip Murray.

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PERSPECTIVE

Honesty at Last

Budget surpluses and a possible tax cut make people say funny things. Folks who never cared a fig about the national debt suddenly are fiscal hawks, and the guardians of the pretense that Social Security is a pension program now are willing to talk about it in other terms.

It is a peculiarity of tax cutting that only people who actually *pay* taxes can have their taxes *cut*. It must be a law of the universe. Nevertheless, that peculiarity disturbs commentators of a statist bent. If you say to them that it seems only just for tax cuts to go to the *taxpayers*, they are apt to say, with the expression of a patzer who just captured a pawn, that plenty of low-income people who don't pay income taxes do pay the Social Security tax and should get a tax cut.

Indeed they do and should. Any libertarian is delighted to hear the champions of Social Security acknowledge that the payroll deduction is really a tax. They've been in denial about this for decades. The "C" in FICA, remember, stands for "contribution." When Social Security was passed, the deductions were portrayed as contributions to one's personal pension fund. We know that there is no fund and that the money is spent as soon as it is received.

So we may regard as progress the acknowledgment that those deductions are indeed taxes. And further, we of a tax-hating bent may also rejoice at any suggestion to cut or, preferably, eliminate the payroll tax and abolish Social Security. But don't hold your breath waiting for action. Most of the people who bring up the subject don't want to tamper with Social Security. They just want to throw sand in the gears of the income-tax–cut machine. Besides, cutting the payroll tax for low-income people while leaving the rest of the system intact would just make Social Security even more of a welfare program than it is now.

* * *

U.S. politicians routinely extol "self-government." But over the years the definition

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of that term has changed in America, and with it, writes Hans Eicholz, the notion of the state.

"Smart growth" is all the rage for government planners these days. But is it only a euphemism for telling others how to live? H. Nathan Hart and Paul Cleveland take up that question.

Sunshine is a movie that depicts three generations of a family coping with the changing regimes in Hungary. Matthew Hisrich finds some lessons for our own time.

For a very long while, sometimes loudly and sometimes quietly, a group of zealots has been plotting to take away our inches, quarts, and pounds and replace them with centimeters, liters, and kilograms. Peter Seymour has the history of the heroic American resistance and the current status of the scheme.

Are Napster and its associates a band of thieves who pillage musical performers by ignoring their copyrights? Or are copyrights and patents a form of state-granted monopoly privilege that can't bear up under classical-liberal scrutiny? Ilana Mercer sorts out the issues.

The civics textbooks teach that zoning is the local government's way of assuring a proper quality of life for residents. Andrew Morriss's brush with his town's planning board taught him a different lesson.

The socialists' latest bogey is globalization with its alleged attendant evils, including the exploitation of people in the developing world. Things are so bad that the capitalists use one group of poor people to harm another. But Barry Loberfeld doesn't see it that way.

Countries that want to make the transition from statism to freedom would do well to look at some examples in Latin America. Christopher Lingle has the details.

James J. Hill is in the pantheon of distinguished American entrepreneurs. And he wasn't fond of the federal government. Daniel Oliver tells the story of the great railroad man.

Government deposit insurance promises that people's money is safe in a bank or savings and loan. Unfortunately, government has often prohibited a better form of protection, says Larry Schweikart.

This month the columnists ruminate on a variety of provocative subjects. Donald Boudreaux wonders if we need the state at all. Lawrence Reed reminds us that Prohibition still exists. Doug Bandow sees continuing inanities in the Balkans. Thomas Szasz warns of danger in government's subsidizing faith-based organizations. Dwight Lee continues his discussion of pollution. Mark Skousen points out the best places to study Austrian economics. Walter Williams knows a tyrant when he sees one. And Aeon Skoble, pondering claims that capitalists should love the estate tax, objects, "It Just Ain't So!"

Books coming under scrutiny from our reviewers deal with Karl Marx, Julian Simon, the Food and Drug Administration, egalitarianism, the stock market, and the unintended consequences of "reform."

—SHELDON RICHMAN

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Thoughts on Freedom

by Donald J. Boudreaux

The "A" Word

I confess to having deep sympathies for anarchism. I hold open the possibility and the hope that a prosperous and peaceful society can flourish without the state.

Unfortunately, the word "anarchy" has an offensive connotation. Anarchy is commonly understood to mean "lawlessness." And lawlessness truly is offensive. A lawless society has no rules to govern behavior. It is a society in which the physically mighty and the deviously clever prey upon others. Victims of these predators suffer grievously. With security of persons and their property being precarious, a lawless society is inevitably destitute. Commerce, industry, saving, and investment don't arise. Nor does civilization. Nearly all human effort, along with what few resources exist, is spent on plunder and on trying to protect oneself from plunder. Life is truly, to use Thomas Hobbes's line, "solitary, poor, nasty, brutish, and short."

Lawlessness is a curse worthy of our deepest fears.

This justified fear of lawlessness underlies most people's assumption that the state is necessary. Most people—even many libertarians—assume that law must be supplied and enforced ultimately by the state.

I dissent. I disagree with those who say "Well, *of course*, the state at least must supply law and order, and protect us from violence and theft."

What I disagree with is the "of course." I object to the unreflective *assumption* that an agency with sovereign authority to use coercion—the state—is necessary. The state might indeed *be* necessary, but the burden of proving it ought to be on those who make the claim rather than on those who question it.

No human agency has as much blood on its hands as the state. Throughout history, states have routinely slaughtered innocent people—people outside of and within their own jurisdictions. Too many states have subjugated the masses and prevented ordinary people from trading freely and living according to their own individual lights rather than according to how the rulers wish them to live.

And modern states have raised these frightful arts to new heights. Obviously, communist and national-socialist states are most savage. But even the United States government has spilled innocent blood and tyrannized peaceful people. In the past it enforced slavery, conscripted young men to fight and die in wars, and herded native Americans onto reservations and treated them cruelly. Today it conducts armed raids in search of narcotics; prevents people from voluntarily using drugs that their physicians might otherwise prescribe as cures; seizes property in asset-forfeiture actions; and puts every American at greater risk of terrorist attack by intervening in the politics of other nations. Government in the United States today is even trying to superintend our thoughts by enacting hate-crime statutes.

No institution with the state's track record deserves a presumption of legitimacy.

Donald Boudreaux (dboudreaux@fee.org) is president of FEE. He will become chairman of the economics department at George Mason University on August 1.

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Again, it's possible that even the best feasible stateless society will be worse than a society with a well-structured government constitutionally limited to protecting its citizens from violence and theft. But let the case be made. Do not accept the necessity of the state as beyond question.

The more we learn about history and economics, the more we see how remarkably creative and effective are voluntary actions within a regime of private property rights.

Mistaken Presumptions

Everywhere in the Western world, from even before the collapse of Rome until the late eighteenth century, consensus opinion held that religious belief is so important that it must be regulated by the state. Chaos was thought inevitable if everyone was free to choose which, if any, gods to worship. We now know that peace and order do not require state oversight of religious belief.

Until the late eighteenth century, consensus opinion held that international trade is too important not to be regulated by the state. People trading freely will, it was widely believed, impoverish both state and society. But the analyses offered by Adam Smith, David Ricardo, Frédéric Bastiat, and Co., along with real-world experience, proved quite the opposite.

Until very recently, even free-market economists thought that only the state can issue stable money. But historical research along with sound theoretical work has now shown convincingly that sound money has been, and can be, issued by purely private firms. Indeed, privately issued money is more likely to hold its value than is money issued by government.

The history is similar for freedom of speech and freedom of the press. So much of what consensus opinion once held to be unquestionably necessary for the state to regulate is now proven to be best left free.

Isn't it possible that the same is true for law?

We already know that much law is the product of voluntary actions rather than of state coercion. Western commercial law originated not in the head of some monarch or from the deliberations of a state assembly. Rather, this law grew from the daily practices of private merchants. The "Law Merchant" (which is the foundation of the Uniform Commercial Code in use today in the United States) originated in medieval times when commerce on the Mediterranean began expanding. Merchants in Genoa or Venice shipped goods to merchants in north Africa and other distant places. And vice-versa. No sovereign power governed these merchants collectively. If a Tunisian merchant refused to pay his Venetian supplier for goods shipped from Venice, no royal sheriff or international Pooh-Bah could be called in to forcibly extract payment from the recalcitrant Tunisian.

Nevertheless, trade flourished. The reason is that the merchants themselves—business people sharing no sovereign master—developed law courts and procedures and, hence, a body of nuanced law that determined merchants' rights and obligations.

If a merchant disregarded the ruling of a merchant court, or otherwise violated merchant law, he wasn't imprisoned or threatened with violence. Instead, he simply lost the most valuable asset any business person can possess: a reputation for integrity. A lawbreaking merchant could no longer find other merchants to deal with. He was out of business. One result of this system of voluntary law was a remarkable degree of law-abiding behavior.

Does the success of private commercial law prove that other types of law—most notably, criminal law—can be supplied privately? No. But the Law Merchant combines with a long history of mistaken presumptions about the necessity of state action to suggest that we ought not *presume* that the state is necessary to supply law and protection from aggression. Perhaps, just maybe, a peaceful and productive society is possible with no state at all.

Whether a stateless society is called "anarchic" or something else is unimportant. What's important is that we not dismiss the possibility before seriously reflecting on it. □

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JULY 2001

Capitalists Should Love the Estate Tax?

It Just Ain't So!

Writing in the February 15 issue of online magazine *Salon*, philosophy professor Sam Fleischacker says that he found it "inspiring" that George Soros, Bill Gates Sr., Warren Buffett, and several other wealthy people had spoken out in favor of retaining the estate tax. Fleischacker argues that it is precisely defenders of capitalism who should "fervently defend" the estate tax. But his argument fails to take property rights seriously, and although he can cite some historical support, it is insufficient to prove the point.

It should go without saying that just because Bill Gates Sr. says something (even in the March 18 *New York Times Magazine*) doesn't mean that it is true. But Fleischacker quotes Adam Smith as saying "there is no point more difficult to account for than the right we conceive men to have to dispose of their goods after death." Why should this be any more persuasive? I'll take Fleischacker's word for it that Smith believed the only justification for inheritance was to provide for dependent children who would otherwise starve, but that's really neither here nor there with respect to rights. Fleischacker's best bet for historical support, at least as regards American government, is his claim that Thomas Jefferson was intrigued by the idea of abolishing hereditary privilege. But it's not clear that this is the same thing as forcibly limiting a family's right to keep property in the family, and even if it were, it wouldn't follow that Jefferson's endorsing it would make it a good idea.

The commentators defending the estate tax on ostensibly capitalist grounds (Andrew Sullivan made a similar argument in the March 19 *New Republic*) seem to base their position on the theme of aristocracy versus entrepreneurship. This appeals to our sense that what makes capitalism work is that people get paid for their productivity. Since people want to get rich, they have an incentive to be productive. The idea is that, in capitalism, one gets rich by doing something of tremendous value, as opposed to, say, feudalism, wherein one's wealth and privilege was simply a function of the hereditary "aristocracy." Fleischacker's contrast of earned privilege versus inherited privilege is meant to evoke the sort of powdered-wig "nobles" who got their heads cut off, or otherwise experienced a decline in security, in the late eighteenth century. But the idea that rich people in *capitalist societies* will become the next feudal aristocracy is a bit of a stretch.

Fleischacker argues that a "central principle of capitalist societies" is that social privileges should be earned rather than handed down. But actually, that isn't the point. The "main theme" of capitalist society, or to put it in less loaded terminology, a free society, is rights. In the old feudal orders that Sullivan and Fleischacker rightly scorn, "rights" referred to special privileges granted by the king to his barons. But the post-Enlightenment conception of rights is something that applies to everyone equally. According to John Locke, for example, we all have an equal right by nature to be free and to own the fruits of our labor. It is this conception of rights that underlies Jefferson's claims in the Declaration of Independence. So it's actually true that social privilege is, for the most part, earned, but that is a by-product of classical liberalism, not its essence.

That same system of rights means that I am entitled to use my wealth as I see fit (other than to harm others), and it is surely not surprising that what many wish to do with their wealth is give it to their children. For many people, that's the whole point behind financial

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success: to be able to provide a more comfortable life for your kids than you had. In fact, that's the whole notion of the American Dream.

A Hindrance to Mobility?

Fleischacker isn't opposing this, of course. His point, and Sullivan's, is that once a family has a certain amount of wealth, this model makes the children less likely to be productive. They'll have reached a level where they can just sit in their mansions and be idle. The pro-tax argument is that this is actually a hindrance to the mobility model. But this objection fails for two reasons. One, it presupposes that there is a static amount of wealth in the universe, so that if Jones sits at home on his pile of inherited cash, Brown cannot become wealthy. But as any introductory student in economics can tell you, that is false. In any case, Jones is likely to do more than literally sit on his cash like Scrooge McDuck. A more realistic possibility is that he will continue to invest it to be sure that his children also have a big pile of cash.

Two, if Jones did become totally unproductive, that's his prerogative in a society that respects rights. As long as he is not using his wealth to harm others, it's not up to Fleischacker, or me, or the President, or anyone else what he does with his money. Again, Brown still has the same chance of becoming rich regardless of what Jones is doing with his pile of cash. Jones's likely course, that of continued reinvestments, might make it easier for Brown, as would Jones's extravagant consumption habits. But the total amount of wealth in the world is not fixed, so Brown has his shot at getting rich no matter what Jones does.

Both Fleischacker and Sullivan make a lot out of the fact that dead people have no property rights (and they both object to the label "death tax" on grounds that the dead don't pay them). But this is disingenuous. Of course it's true that dead people do not have property rights, but if living people do, then there's no reason to think that setting up wills and endowments and trust funds isn't among their options. If I have the right to buy a yacht when I'm 95 and give that to my daughter, why can't I just give her a million dollars, and let her decide what to do with it? Fleischacker's response to this is to say that it's wrong for me to be able to buy my children political office. Well, of course that's true, and it is also true that rich people have greater access to power than the non-rich. But that's an objection to politicians more than it is to rich people. Would it be acceptable for a newly rich dot-com billionaire to buy political power? No. So it's not the fact that the wealth is inherited that makes it politically dangerous. It's the fact that all politicians are susceptible to the allure of money, which is indeed dangerous. But we can't fix that by restricting property rights. □

—AEON J. SKOBLE
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United States Military Academy, West Point
(The ideas expressed here are his own.)

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IDEAS ON LIBERTY
JULY 2001

Self-Government and the Distinctive Character of American Civil Society

by Hans Eicholz

When America resisted British taxation, Parliament was amused. The Americans would get their comeuppance by force of arms because America had forsaken the law and order of the empire. As days moved to weeks, and weeks to months, the amusement changed to frustration and the frustration to shock. Edmund Burke explained why:

> We were confident, that the first feeling, if not the very prospect of anarchy, would instantly enforce a complete submission. The experiment was tried. A new, strange, unexpected face of things appeared. Anarchy is found tolerable. A vast province [Massachusetts] has now subsisted, and subsisted in a considerable degree of health and vigour, for near a twelvemonth, without governor, without public council, without judges, without executive magistrates. How long it will continue in this state, or what may arise out of this unheard of situation, how can the wisest of us conjecture?[1]

Parliament had deluded itself into believing that order flowed from its supremacy. What Americans understood was that order arose from many sources in society and not just political government. It was through the various avenues of custom, rational self-interest, faith, and fellow feeling that individuals acquired the capacity for personal self-government. The first definition of that term in an American English dictionary was simply government of one's self. It was individual and personal, and it was that which gave to American civil society its distinctive and robust quality.

Americans, governing themselves individually, associated freely for all manner of purposes, whether to spread knowledge, help the unfortunate, found a hospital, establish a church, or put out fires. But today we speak primarily of collective political self-government, with little or no mention of the original understanding. That shift has produced a profound reorientation of Americans' attitude toward the role of politics in our communities, an attitude that threatens the foundations of American civil life.

From earliest usage, Americans did not think of "government" in quite the same way as their British counterparts did. Comparing the popular British dictionary by Samuel Johnson (1810 [10th revised and corrected edition]) with Noah Webster's first American English dictionary (1828) is instructive. Johnson gives the political understanding as primary: "1) Form of a community with respect to

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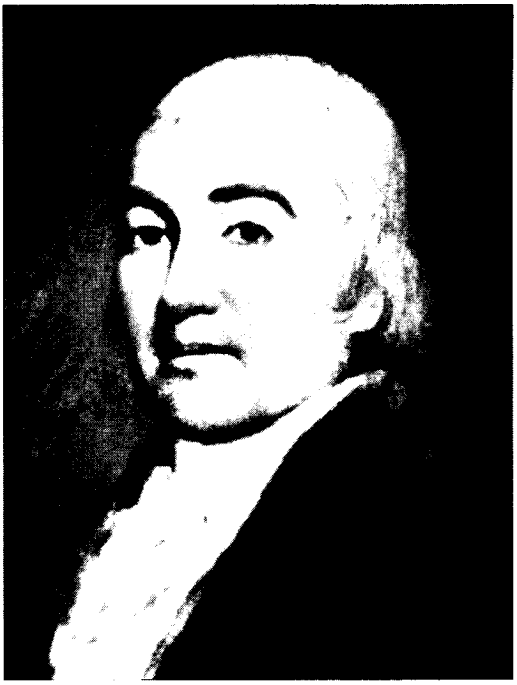
the disposition of the supreme authority." And "2) An established state of legal authority." Webster, on the other hand gives, "1) Direction; regulation. These precepts will serve for the government of our conduct. 2) Control, restraint. Men are apt to neglect the *government* of their temper and passions." Only by the fifth definition do we get to the political, or "The system of polity in a state. . . ."

Webster's emphasis was on the individual quality of *personal* government, as illustrated by his examples of "our conduct" or "their tempers and passions." Johnson's, on the other hand, immediately assumes the primacy of a sovereign authority over a community. Consider the sources. Samuel Johnson was a noted English Tory essayist opposed to the colonial resistance to Parliamentary taxation. Perhaps his best-known essay among Americans at the time was "Taxation No Tyranny" (1775). The whole conception here was of the top-down imposition of order on an erring community: "There must in every society be some power or other from which there is no appeal, which admits no restrictions, which pervades the whole mass of the community, regulates and adjusts all subordination, enacts laws or repeals them, erects or annuls judicatures, extends or contracts privileges, exempt itself from question or control, and bounded only by physical necessity."[2]

An Erring Rebel

Webster, by contrast, was one of those erring rebels, an American Patriot, but he was not by any means the most radical of those sorts. Indeed, Webster was an ardent Federalist, a centralizer by comparison with the more extreme members of the American Whig revolutionaries, and prone to lament the disorders he saw at the level of the state governments. Even so, his focus was not directed principally to government as the source of order, but to individuals in communities or society, a fundamental distinction that underscores the nature of the American Revolution as a defense of rights retained by the people and not surrendered up to the claims of parliamentary supremacy, or any government for that matter. For government to violate such rights was to invite the people to "alter or abolish it," as the Declaration claimed.



Noah Webster (1758–1843)

And to have the stomach for such resistance required a deep appreciation for all of the nonpolitical ways people gave order to their lives. In this conception, society was sharply distinguished from political government. One need only reflect on the opening lines of that extraordinarily successful pamphlet of the same year as Johnson's essay, Paine's *Common Sense*:

> Some writers have so confounded society with government as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants and government by our wickedness; the former promotes happiness positively by uniting our affections, the latter *negatively* by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher.[3]

It is not to be wondered then that "self-government" finally entered Webster's dictionary as "Self-governed," meaning simply,

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"Governed by one's self." That was in the year 1841. In 1854, its noun form, "self-government," was entered and defined solely as "The government of one's self." It was personal; it was individual, and *nothing* else.[4] And it is no coincidence that this conception went hand in hand with the flourishing of American associational life during the same period. How people conceive themselves to be governed will determine whom they will look to for help in meeting life's challenges. Thus Tocqueville observed a vibrant American civil society where individuals came together voluntarily, forming associations for every possible cause:

> Americans of all ages, all stations of life, and all types of dispositions are forever forming associations. There are not only commercial associations and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute. Americans combine to give fetes, found seminaries, build churches, distribute books, and send missionaries to the antipodes. Hospitals, prisons, and schools take shape in that way. Finally, if they want to proclaim a truth or propagate some feeling by encouragement of a great example, they form an association. In every case, at the head of any new undertaking, where in France you find the government or in England some territorial magnate, in the United States you are sure to find an association.[5]

The personal sense of responsibility and self-government on which this extended order of self-help was based persisted well into the twentieth century. But today most dictionaries appear to list self-control, or self-command, as outmoded or rare, and some only list the political definition. The one remaining dictionary to define self-government in the individual sense as primary is the Merriam-Webster, which lists "self-control; self-command," as the initial definition, and self-control means simply the "control of oneself." Even here, however, there has been a subtle shift.

Alexis de Tocqueville (1805–1859)

In the second edition of *Webster's New International Dictionary* (1934–1961), Merriam-Webster made the political definition dependent on the individual sense of self-government, one implication being that you could not have democracy without self-governing individuals: "1. Self-control; Self-command. 2. Hence, government by the joint action of the mass of people constituting a civil body; also the state of being so governed; specifically, democratic government." In 1961, the publisher dropped "Hence," implying that the two concepts are now separable.[6] Such a sudden change for a publisher was no doubt preceded by a long steady erosion in usage, a period of time corresponding to the expansion of government in American life. Scores of writers have chronicled this development in the growth of government, such as Jeffrey Rogers Hummel on the Civil War and Robert Higgs on political and economic crises. What seems less well known is how profoundly that change has altered our very language, and how that in turn has warped the role and function of our civil associations and major philanthropic endeavors.

Then there's *Encarta,* published by Bill

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Gates's Microsoft. A popular dictionary on the market today, it lists the primary definition of self-government as the right of citizens to choose their own government. The second definition is the older one of personal self-government, or self-control, and it is listed as archaic. We have returned to the world of Samuel Johnson.[7]

The top-down view of order is back, and if you have any doubts, consider Stephen Holmes and Cass Sunstein's *The Cost of Rights*: *Why Liberty Depends on Taxes*. Profoundly Tory, they make Johnson's case even as they insist that government is the basis for "the full panoply of rights characteristic of the American tradition." And just what do they think that tradition is? "Personal liberty," they write, "as Americans value and experience it, presupposes social cooperation managed by government officials. The private realm we rightly prize is sustained, indeed created, by public action."[8] You can just hear the huzzas from Westminster.

For our civil associations the change was noted in 1965 by Richard Cornuelle, when he observed sadly that the "independent sector now mainly promotes its government competitor. The test of a good citizen is not that he takes responsibility, but that he successfully sends it to Washington."[9] That remains as true now as it was then—and even more so.

The standard bearer of top-down assistance for our "crisis" in community is Robert Putnam of *Making Democracy Work* and *Bowling Alone* fame. In a recent white paper produced from his Saguaro seminar at Harvard, "Bettertogether," Putnam et al. advocate public-private cooperation, calling for among other things, "employers and policy makers to design norms and regulations that will effectively govern the new economy while not harming social relations." Such a mixture of voluntary and legislative measures will take time, especially those for "planning and building political support." He seems completely unaware that as government becomes more involved, personal responsibility recedes, and with it goes the lifeblood of our voluntary associations. By advocating closer ties with government he administers more poison, not medicine.[10]

Putnam is quick to lament the decline of political participation among Americans, and he is right to correlate this to the decline of American voluntary associations. He is wrong, however, to generalize the cause to some amorphous set of societal woes. It has rather a very specific origin in the decline of self-respecting, self-governing individuals, and their replacement by overweening bureaucrats and lobbyists.

Less Participation

As government in the twentieth century became more distant, more centralized, more involved in our daily affairs, it took on the appearance of something done to us, rather than something we participate in. When government was small and did relatively little, people relied more on themselves and associated freely. Since government was kept fairly local, they had considerable stake in what it did. Participation was high if for no other reason than that people fought to protect themselves from the political advantage-seeking of their neighbors. The more such local power was removed to Washington, however, the less interesting politics became for all but an elite. The irony now is that we pay homage to political "democracy" as the primary form of self-government, but participate less and less as government grows more and more. Yet Putnam believes that even more government involvement is needed to shore up community, and this has been heard by the new administration in Washington. Faith-based initiatives are the rage, but no one stops to consider that government money comes with government strings, and those strings will not allow for free association because that implies voluntary *discrimination*.

Has anyone stopped to consider that the success of a faith-based charity might be due to the fact that it can demand of its clients a commitment to that faith? Such commitment usually entails the fostering of a strong sense of personal responsibility, but if organizations are not allowed to turn those away who refuse to commit themselves, what have they become but mere government agencies with all the inefficiencies that entails? And what

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has become of our understanding of political advantage-seeking? Is government money no longer corrupting? Do the lessons of Public Choice political economy not pertain to faith-based organizations? How do we expect them to govern themselves if they are also to be governed from Washington?

Here is the problem. We can't restore what has been the distinctive source of strength in our civil society if we do not restore our understanding of personal self-government. We can't restore personal self-government if we do not restore the limits to political government. Disbursing money from Washington only reinforces the idea that order comes from "the top." Rather, we need to keep money at home, give power back to localities, and get active in the home-grown development of our civil associations. Above all we need to remind ourselves why our forebears fought: Self-government, in every sense of the word, depends first and foremost on individuals who insist on governing themselves. Otherwise we can look forward to becoming just another ordinary country like those found in Tocqueville's Europe, then and now, with large government agencies drawing all responsibility to themselves and great Tory magnates demanding more taxes. Oh heck, we're already there. □

1. Edmund Burke, Speech on Conciliation with the Colonies, March 22, 1775, as presented in Philip B. Kurland, Ralph Lerner, eds., *The Founders' Constitution*, vol. 1 (Indianapolis: Liberty Fund, Inc., 2000), p. 6

2. Samuel Johnson, *A Dictionary of the English Language in Two Volumes*, vol. 1 (London: F. and C. Rivington, etc., 1810); Noah Webster, LL.D., *An American Dictionary of the English Language in Two Volumes*, vol. 1 (New York: S. Converse, 1828); Samuel Johnson, "Taxation No Tyranny," in Donald J. Greene, ed. *Political Writings/Samuel Johnson* (Indianapolis: Liberty Fund, Inc., 2000), p. 423. It is interesting to compare the different attitudes of Johnson and Webster to language, which, as Bernard Mandeville and F. A. Hayek argued, is a kind of spontaneous, evolved order. In his preface to the dictionary Johnson says "wherever I turned my view, there was perplexity to be disentangled, and confusion to be regulated"—a very Tory disposition to view what is spontaneous as chaotic. Webster in his preface, on the other hand, notes the ideal of conformity for the sake of communication, but sees the value in preserving what is distinctively American, writing that "although the body of the language is the same as in England, and it is desirable to perpetuate that sameness, yet some differences must exist. Language is the expression of ideas; and if the people of one country cannot preserve an identity of ideas, they cannot retain an identity of language." For Mandeville and Hayek on language see Chiaki Nishiyama and Kurt R. Leube, eds., *The Essence of Hayek* (Stanford, Calif.: Hoover Institution Press, 1984), pp. 187–188, 319.

3. Thomas Paine, *Common Sense*, in Mark Philp, ed., *Rights of Man, Common Sense and Other Political Writings/Thomas Paine* (New York: Oxford University Press, 1995), p. 5.

4. Noah Webster, *An American Dictionary of the English Language; First Edition in Octavo* (New Haven, Conn.: B. L. Hamlen, 1841), p. 562; Noah Webster and Chauncey A. Goodrich, *An American English Dictionary of the English Language* (Springfield, Mass.: George and Charles Merriam, 1854).

5. Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence (New York: Harper and Row, 1988).

6. *Webster's New Collegiate Dictionary based on Webster's New International Dictionary, Second Edition* (Springfield, Mass.: G. & C. Merriam Co., 1959); *Webster's Third New International Dictionary* (Springfield, Mass.: G. & C. Merriam Co., 1961).

7. *Encarta World English Dictionary* (Microsoft, 2000); see http://dictionary.msn.com/find/entry.asp?search=self-government.

8. Stephen Holmes and Cass R. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: W. W. Norton & Co., 1999), pp. 15, 220.

9. Richard C. Cornuelle, *Reclaiming the American Dream: The Role of Private Individuals and Voluntary Associations* (New Brunswick, N.J.: Transaction Publishers, 1993 [1965]), p. 70.

10. See the seminar paper, p. 29, at www.bettertogether.org.

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IDEAS ON LIBERTY
JULY 2001

Prohibition Hasn't Ended Yet

It's been nearly seven decades since the national war against alcohol during Prohibition (1920–33) came to an end with the repeal of the Eighteenth Amendment. But 30 states, including mine (Michigan), still prosecute a kind of mini-Prohibition of their own: They forbid consumers from buying wine from other states unless the products are shipped through a state-licensed liquor authority. (Some number of states also have similar laws against imports of other forms of booze but I'm focusing on wine in this essay because it's what I like best.)

The Michigan law is a relic from 1934, when states took over the regulation of alcohol sales after national Prohibition was repealed. Its practical effect today is to bestow a monopoly privilege on domestic sellers, raise prices, and limit choices for consumers.

Imagine if the state of Georgia passed a law declaring that its citizens could not buy peaches from producers in any of the other 49 states unless they imported them through a state agency that jacked the price up 25 percent. Could such a law be defended as anything but a brazen favor for a special interest, Georgia peach growers?

Yet in Michigan and 29 other states, ancient laws that restrict the importation of wine are often seen as serving some public good. The fact is, they don't serve the public and they don't do any good. No credible evidence exists showing that people who tend to abuse wine are deterred from getting it because of these regulations.

According to Deborah Simpson of the Institute for Justice (IJ), a Washington, D.C.-based legal advocacy group with a track record of getting special-interest legislation thrown off the books:

> Laws in most of the 30 "prohibition" states even forbid tourists who visit wineries to ship a bottle or a case of wine home to themselves. Seven states classify such shipments as a felony. In some states, like Maryland, a consumer may not even carry wine back home from a visit across the Potomac to Virginia's wine country. They are limited to purchasing wine from one of the 50 wineries typically sold in the average wine shop or liquor store, a minuscule percentage of the 4,500 labels produced in California alone.
>
> With such oppressive laws, you may well have to wait until your next vacation to enjoy once more that lovely California Pinot Noir.

Without a doubt, lots of people ignore such laws and transport lots of illegal alcohol across state lines even for the purpose of resale. Short of searching every car and truck at the borders, no state can possibly expect to stop the flow. The primary effect of these anti-booze laws is probably confined to preventing wineries and other beverage distributors from selling their wares over the Internet. If you

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live in one of the 30 Prohibitionist states and have ever attempted to purchase wine from one of hundreds of Web sites of wineries in other states, you've discovered that all but a handful send back a reply, "Sorry, yours is not a ship-to state. We can't sell to you."

In Michigan, a tiny number of out-of-state sellers have been "approved" to sell and ship to Michiganians: They are the ones—surprise, surprise—that agree in advance to comply with state regulations and promise not to undercut the prices charged by in-state producers.

Simpson explains:

> Those restrictions are not only maddening to small wineries, which, like any business, depend on finding and keeping new customers, they are profoundly anti-consumer given the Internet's ability to match producers to virtually every interested consumer. Websites could help California or Virginia wineries locate potential customers in New York and advertise their latest-release wine to that interested audience. But under New York's laws, if a winery owner posts any wine list or order form on a website or sells wine directly to that New York consumer, he is an outlaw.

Defenders of these protectionist, nanny-state rules argue that opening up the market to Internet sales would make it easier for underage minors to get alcohol. James Rodney of Birmingham, Michigan, has a commonsense answer to that: "I really think a minor who wanted a bottle of good wine would find someone to buy it for him instead of using a credit card over the Internet and waiting for delivery at his parents' residence or even a college post office box." Like thousands of citizens who don't abuse alcohol and would simply like to get an occasional bottle from a favorite out-of-state winery, Rodney wonders what makes the state think its law does any good. He notes that Michigan wineries that have Web pages can and do sell wine legally over the Internet to Michigan residents!

So ultimately, what we've got here is not a law that prevents wine drinking; it's simply a law that prevents one convenient way of getting it, or of getting the *particular* vino of one's choice.

Nonetheless, the Michigan Liquor Control Commission does make an enforcement effort. In a state of nearly 10 million residents, the Commission seized more than a hundred packages of illegally shipped wine, beer, and liquor last year. That's right—barely a hundred packages. Only a nincompoop could think they got it all, or that a *hundred* packages represented more than a drop in the vat. At the same time its agents snapped up a few bottles of booze (probably spending a small fortune to do so), the Commission has been fighting a lawsuit filed by Michigan residents who claim the law is unfair and violates the interstate commerce clause of the U.S. Constitution.

No matter what happens in Michigan courts, the ban on interstate sales of alcohol may run afoul of events elsewhere. IJ is litigating a challenge to a similar state law in New York. In refusing to dismiss the case last September, a U.S. District Court judge noted that the repeal of Prohibition in 1933 was not intended "to empower states to favor local liquor industries by erecting barriers" to competition. If the case goes all the way to the U.S. Supreme Court, the states may be hard-pressed to defend discriminatory treatment of one another's alcoholic beverages in interstate commerce.

Legislators don't need to wait for the courts to work this out. They should recognize the futility of this throwback to Prohibition, strike a blow for freedom of choice and competition, and repeal these ridiculous, special-interest–serving and otherwise utterly futile laws. □

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IDEAS ON LIBERTY
JULY 2001

The Smart-Growth Scam

by H. Nathan Hart and Paul Cleveland

Transportation is essential to the daily life of nearly every American. Millions of people flock onto the freeways and streets to accomplish innumerable tasks each day. Americans love their cars. No other mode of transportation provides the same individualized choices, schedules, and overall convenience as the automobile.

Despite the obvious advantages of automotive transportation, politicians and environmentalists continue to praise mass transit. They cite all kinds of data aimed at denigrating automotive transportation while claiming that public transportation works better and is more efficient. However, even though billions of dollars have been spent on such systems, they continue to lose money and passengers. The most recent effort of the public-transit crowd is to push for the construction of light-rail systems in urban areas. These projects are terribly expensive and provide few benefits to the communities where they are built. As of 1998, annual spending on public transit was $4.6 billion, and that amount is expected to climb to $8.2 billion by 2002 under the terms of the Transportation Efficiency Act for the 21st Century.[1]

The focus on reducing automotive usage stems from environmental concerns. Environmentalists suggest that automobiles are just plain bad for the environment. In truth, the environmental agenda is larger than simply reducing automobile usage. "Smart growth" policies are intended to significantly change American lifestyles. Thus public transportation is just one piece of the puzzle that environmentalists aim to use to cure the ills that individual automotive use has created. However, the arguments for these projects are not supported by the data and do not follow from a cost-benefit analysis. In fact, public transportation does not work, nor will it work, no matter how much money is thrown at it. Without the continual influx of government funding, many of these public-transportation efforts would fail, and fail spectacularly.

The recent efforts to promote increased public transit stem from "new urbanism" policies also known as "smart growth." Former Vice President Al Gore is among the many supporters of these plans. Free-market environmental writer Randal O'Toole summarized the details of smart growth by outlining what these modern-day social engineers believe will result from the implementation of their ideas. According to the proponents of smart growth, metropolitan areas should be denser. To accomplish this, legislation would be enacted to forbid new construction on land outside the main urban area, and transportation would be redirected away from individualized roadways towards mass-transit routes. The aim is to eliminate all means of private transportation except for walking and bike riding.

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In essence, proponents seek to eliminate individual liberty. To accomplish this, the reformers want to prohibit investments in new roadway construction and to divert the revenues generated by gasoline taxes to public-transit projects, namely light rail. Any investments aimed at roadways would be used to reduce their capacity. Smart-growth activists refer to this destruction of roads as "traffic calming." To be sure, the vehicles on the road would not be moving very fast, but we seriously doubt that the drivers would be calm.[2]

New residential developments would be transit-oriented and focus on high-density, multi-family complexes near rail stations or along transit corridors. These developments would be designed to make it difficult to use one's automobile. In other words, they will have narrow streets and wide sidewalks. Stores would front the sidewalk and there would be few, if any, parking lots.[3] The clear aim of such projects is to force people to use the state-provided transportation services, thus limiting their mobility and freedom.

In support of their smart-growth agenda, environmental utopians argue that urban sprawl is to blame for many of society's ills. These include increasing income inequality, job insecurity, central-city decline, increasing housing costs, long commutes, environmental problems (especially global warming), species extinction, loss of farmland, a sense of isolation, elevated blood pressure, muscle tension, intolerance, psychological disorientation, and even murder and mayhem.[4] Supposedly, smart growth is the medication needed to heal these illnesses. However, will such an agenda cure anything?

Falsified by the Data

The arguments for this agenda are inherently flawed and can readily be exposed as false when the data are examined. Wendell Cox argued convincingly that the so-called ills associated with urban sprawl would only be magnified by smart-growth policies. First, traffic congestion is greater in the compact city. "Urban areas with higher levels of traffic congestion, as measured by the federal government's Roadway Congestion Index, have higher population densities."[5] Since cars pollute more when stuck in traffic, more pollution will accompany higher-density cities. Forcing more people onto less road space will only slow traffic and increase air pollution.[6] This is borne out by the Environmental Protection Agency's own data, which indicate that metropolitan air pollution is more extreme in the densest areas and nonexistent in those that are least dense.

In another worry, opponents of sprawl fear the reduction in farmland as cities expand. However, this concern is largely unsubstantiated. While agricultural acreage in the United States has fallen by 15 percent since 1950, production has increased by more than 105 percent. Advances in technology have reduced the amount of land needed for agricultural production, and thus land can easily be used for other purposes. "At current rates of urban expansion, it would take more than 250 years to urbanize the amount of agricultural land taken out of production between 1960 and 1990."[7]

Reminiscent of the worries of Chicken Little, smart-growth proponents claim that job opportunities for those living in inner cities decline because of urban sprawl. However, this has more to do with the qualifications of the people involved rather than with where they live. "Most of the employment-rate differential between white and minority youth was explained in differences in human capital, much less by differences in 'exposure' or differences in geographic access to jobs."[8] Among the ten largest American cities, New York City had the highest monthly central-city unemployment rate, but if jobs are more abundant in the densest cities, why is unemployment so high in a city as dense as New York?[9] Other factors must explain the numbers. Blaming sprawl for high unemployment blatantly disregards the facts.

Is the Market Wrong?

The proponents of smart growth constantly claim to know the best way for people to live. However, their view of a better society differs significantly from that of most people. To believe the smart-growth agenda, one must

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believe that government bureaucrats know what is best for everyone else. The projects proposed by the activists would limit the living arrangements that people could choose. Even before the development of the interstate highway system, people had already begun to flee central cities and move to suburban developments. The freeways were not the determining factor in these decisions. It is true that the freeways enabled suburbanites to travel into the city more easily, but other factors contributed to the exodus. "Escalating crime rates, the urban riots of the 1960s, and declining educational performance in central city school districts, probably were much more responsible for flight from the central cities."[10]

In short, there were many factors that made suburban life more appealing. People chose to live near people with similar interests and family structures. They desired to live in areas where the crime rate was low and where good educational opportunities existed. According to smart-growth advocates, these people evidently made poor choices. But the reality is that people prefer single-family homes and neighborhoods with more open space. As Peter Gordon and Harry Richardson point out, "Numerous surveys show consistency between people's overwhelming stated preferences for low-density living and their revealed preferences in the housing market."[11]

In Portland, Oregon, smart-growth initiatives were recently adopted. A stated goal of the effort was to provide affordable housing. However, residential prices in the Portland real estate market have skyrocketed. Prices of land have increased 400 percent, and the price of housing has increased 80 percent. Indeed, Portland has become one of the least-affordable housing markets in the country.[12] The city has virtually eliminated the prospect for any future growth and has substantially increased the burden on its poorest residents. Portland's leaders have turned the American dream of owning one's home into an expensive bureaucratic nightmare.

What this reveals is that smart-growth advocates are essentially socialist central planners. While they espouse the belief that the urban exodus has burdened local governments and harmed the infrastructure of cities, the opposite is true. "Older and more compact urban forms are costly in many ways: building vertically, enduring crowded roads and facilities, and living in small spaces all incur extra costs."[13] The costs of government and infrastructure associated with more open developments are lower than with those associated with more highly populated urban areas. This lower cost of government is, therefore, just another reason why people leave cities in the first place. The bureaucrats merely want to hold people captive in order to impose the higher costs of their "services" on them. Gordon and Richardson speak of central-city exodus when they quote a survey conducted by the *Los Angeles Times*:

> It was discovered that, of the 2,385 suburbanites interviewed by the newspaper, "the people who live in the suburbs generally love their lives. And the farther they get from Los Angeles, the more they love them." Sprawl's critics presume that people are consistently making the "wrong" choices and that they have only poor choices from which to select. Neither proposition is plausible, and both evince a disrespect (often bordering on contempt) for the wishes of people whose tastes are not shared by the anti-sprawl activists.[14]

Are people making the wrong decisions? To presume that they are is to assume moral superiority over millions of other Americans. The politicians who agree with the anti-sprawl movement blatantly disregard the obvious interests of others to promote their own narrow agendas. Keep in mind these politicians are supposedly employed by those constituents. People have chosen to live in suburban communities and in the process have lowered rather than raised infrastructure costs. According to the smart-growth activists, such activity should be punished.

Commuting Here and There

Smart-growth advocates suggest people spend too much time stuck in traffic. But, exactly how much time is wasted in the aver-

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age daily commute? Because suburban areas have spread out, commuting time has remained relatively stable. "Average peak hour commuting time fell approximately 6% from 1969 to 1995 (from 22.0 minutes to 20.7 minutes)."[15] Automobile travel is much faster than any public-transit service, and more people have come to rely on their cars for transportation. If people actually thought the time involved with commuting was excessive, they would look for alternatives. Private providers, given the legal right to operate, would supply such services to meet the demand. However, no such demand exists because people tend to choose the best option for themselves and have chosen automobiles because they are more efficient.

The U.S. Department of Transportation admits the benefits of increased automobile usage. "According to the United States Department of Transportation, one of the most important reasons that average commuting time has not increased materially over the past 25 years is that people have abandoned transit services for automobiles, which are considerably faster."[16] A public-transit commuter trip takes approximately 80 percent longer than a comparable automobile trip. Only 12.5 percent of commuters traveled more than 45 minutes, and only 6 percent of commuters traveled more than an hour. "The combination of more people in more automobiles traveling more miles at faster speeds without concomitant highway-capacity growth is an amazing example of beneficial market adjustments."[17]

Moreover, the growth in suburban communities has resulted in an increase in the employment opportunities there. This has actually decreased commuting time. The fact is that sprawl has reduced traffic congestion. Should anti-sprawl activists get their way, congestion would greatly increase, not decrease.

There are, of course, some groups that benefit from increased congestion. These people aim to gain political benefits in an effort to promote themselves. A law enabling such "rent-seeking" is the Intermodal Surface Transportation Efficiency Act (ISTEA), or as it is known by one author as, "The Urban Immobility and Pork-Barrel Act."[18] The act empowers government officials to promote congestion and build capital-intensive mass transit systems in two main ways. The EPA can forbid cities that do not meet its standards from constructing new highways, and it allows federal gasoline taxes to be diverted to mass-transit projects. In a Catch-22 scenario, these provisions are sure to increase congestion, increase pollution, and further restrict additional growth.

Who benefits? Randal O'Toole lists some of the beneficiaries. First, central-city governments and downtown business favor increasing congestion in the hopes that it will result in a return to the cities. Environmentalists, who despise the automobile and wish for its extinction, favor such measures. So do urban planners, who believe they know how people should live, because they would be authorized to force others to conform.[19] All these groups seek the diversion or complete removal of federal highway money even though it is supplied by user fees. Instead, they wish to engage in a redistributional power grab by moving these funds to mass transit projects. Thus they show a total disregard for others.

The EPA's Assault on the Automobile

The EPA focuses a great deal of effort on promoting smart-growth policy "initiatives." Although environmentalists claim the government has subsidized the highway system, consumers actually paid for its construction and maintenance through excise taxes, which are user fees. Historically, the money collected from the tax was earmarked for highway development. However, the EPA has used the Clean Air Act to claim control over urban planning and federal transportation dollars. "In 1991 Congress specifically tied federal transportation dollars—nearly all of which are generated by gasoline taxes and other highway user fees—to clean air."[20] Cities classified as too polluted are not allowed to spend any highway dollars unless the plan is approved by the EPA. As of today, more than 113 million people live in cities that are classified as having air-pollution problems.[21] Thus

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according to standards the agency arbitrarily established, the EPA has claimed control over a significant amount of America. The Transportation Efficiency Act for the 21st Century (TEA-21) gives EPA officials the right to hold taxpayers' money hostage to the desires and whims of those running the agency.

Congress passed TEA-21 in 1998 to prevent the diversion of federal highway dollars to nontransportation projects. It was also meant to increase the amount of federal highway funding in order to increase road capacity and reduce congestion. However, "EPA wants to use this power not to clean up the air but to reduce people's mobility, and in particular their automobility."[22]

The EPA has adopted the policies of the smart-growth movement and uses environmental legislation as a means of short-circuiting TEA-21. According to John DeVillars, EPA's northeast region administrator, "Poorly planned suburban growth [that involves any movement away from city centers] is degrading our environment, it's fiscally inefficient, and it's undermining our social fabric. . . . Action to curb it is long overdue."[23]

In addition to its diversion of highway tax dollars, the EPA funds activist groups that lobby Congress for stricter controls. "The agency's Transportation Partners program gives millions of dollars to at least six major organizations with the goal of helping those organizations reduce vehicle travel. EPA has given large grants to a number of national and state organizations to promote smart growth."[24] Thus bureaucrats are using the American people's own tax dollars for an all-out assault on them and their way of life. Some of these groups include the Growth Management Institute, which received $700,000 for "workshops, focus group meetings, and other activities" aimed to be an "antidote to sprawl," and the International City/County Management Association, which received $363,395 to create a smart-growth network.[25] The emphasis of these officials is not to reduce pollution, but rather to control automotive travel. Since so many Americans are unaware of the EPA's actions, the agency pursues its socialistic planning agenda with impunity.

Truth in Numbers

While more than $360 billion has been spent on public-transit systems since the 1960s, ridership is at a historic low. Refusing to accept the message, public-transit proponents call for more money than ever to be spent on such projects. Only 1.8 percent of all personal trips are made using public transit. This is less than those made on foot (5.4 percent) and only slightly above trips made by school bus (1.7 percent).[26] Nevertheless, proponents claim light-rail systems save energy, clean the air, decongest the roads, and promote new land-use patterns.

In reality these systems provide none of these benefits. Unlike buses, the routes of rail systems cannot be changed as commuting patterns change. As a result, they provide relatively little flexibility and are, thus, even more inconvenient than buses, which are losing passengers steadily.

Notwithstanding the evidence, politicians and environmentalists claim that light rail is the way to go in public transit. As usual, the data do not support such claims. "The 10 U.S. cities that added light rail in the years 1980–95 experienced a collective systemwide ridership *loss* of 2 percent."[27] Some of the steepest losses in ridership occurred in some of public transit's strongest markets. The appeal of private transportation persists even with a wide range of transit options in high-density communities. For instance, public-transit systems in the Portland area, of which light rail accounts for 15 percent, serve only 5 percent of the workforce. Yet city officials claim the system decreases traffic congestion.[28] That view defies reason. The reality is that congestion is increasing faster in Portland than in any other western city precisely because of its smart-growth strategy.[29] Nevertheless:

> Portland planners want to spend billions building 90 miles of light-rail, increase population densities by 70% and impose "traffic calming" on many major roads and streets. Yet the planners predict that the share of trips made by auto will decline less than 5%, from 92 to 88%. The share of

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> trips by transit will remain under 5%. That's a huge cost for a tiny change in travel habits.[30]

In his research, Wendell Cox discovered that all but one of the light-rail projects funded by the government were more expensive than the cost of leasing each new commuter a new economy automobile in perpetuity. In fact, some of the light-rail projects are so expensive it would be cheaper to lease each new commuter a luxury car, such as a BMW 7-series.[31] To make matters worse, "Virtually no traffic congestion reduction has occurred as a result of building new urban rail systems. Virtually any public benefit that has been achieved through urban rail could have been achieved for considerably less by other strategies."[32]

On average new U.S. light-rail lines carry 80 percent less volume than a single freeway lane couplet (two lanes of freeway, one operating in each direction), including Portland's MAX. Light-rail systems do not match the volume carried by two-way arterial lane couplets (surface streets).[33] "Over the past 40 years, transit has experienced no growth in the number of riders even though America's population has grown by nearly 100 million."[34] Cox concludes, "Nationally, transit's share of urban travel was approximately 7.1% in 1960; by 1998, it had fallen to approximately 1.8%, a drop of 75%."[35] In fact, public transportation uses 20 percent of federal transportation dollars, yet only provides 3.19 percent of the daily trips to work. By 1995, more people walked or bicycled to work (2.33 percent and 0.43 percent) than went to work by bus or metro (1.76 percent and 0.9 percent).[36]

Only someone totally disregarding the facts could favor the smart-growth policies. People want to drive their automobiles because individualized transportation offers benefits that cannot be matched with other forms of transport. While environmentalists suggest that automobiles are destroying the environment, they have not considered the data showing that the air has become consistently cleaner over the years because of technological advancements. Public transit does not work because people do not want to endure its inherent inconveniences. Funding of light-rail systems should be discontinued immediately, and public transit should be converted to private-sector management. The EPA should no longer be allowed to operate as it does and ought not be allowed to dictate how the American people should live.

Smart-growth policies should be abandoned. □

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IDEAS ON LIBERTY
JULY 2001

Sunshine and the 21st Century

by Matthew Hisrich

As Richard Weaver remarked in *Ideas Have Consequences*, "The typical modern has the look of the hunted. He senses that we have lost our grip upon reality. This, in turn, produces disintegration, and disintegration leaves impossible that kind of reasonable prediction by which men, in eras of sanity, are able to order their lives."

Arguably, much of the twentieth century, barring an initial boom of optimism, was marked by a critique of the "modern man."

The loss of something central to humanity's core was lamented by literary figures from T. S. Eliot to Ernest Hemingway, as well as by a host of political and social philosophers. These days, all eyes seem focused on visions of the future, either predictions of progress and peace or fears of powerful new technologies. In such an environment, introspection can be hard to come by. Enter *Sunshine*, a recent critically acclaimed film (now on video) by director István Szabó, which stars Ralph Fiennes. Here the great tyrannical tragedies of the twentieth century are displayed as sobering reminders for the generations to come.

Sunshine tells the story of three generations of the Sonnenscheins—a Jewish family living in Hungary—with Fiennes playing the central character in each segment. The family suffers as power changes hands from the Austro-Hungarian Empire to the Nazis and then to the communists. "I have seen the collapse of government after government, and they all think they can last a thousand years. Each new one always declares the last one criminal and corrupt, and always promises a future of justice and freedom," laments one of the movie's characters, revealing the slowly gained awareness of political realities.

The three generations make every effort to accommodate each passing regime, casting a blind eye to the corruption and abuses around them. The movie is in large part about this natural tendency—Fiennes is neither a hero nor a moral monster. This is the depiction of individuals who want to find a place for themselves within society and who wish to belong, to succeed, and to fulfill a self-developed idea of who they are. The ability of groups to maintain power is less the mysterious enigma often contended and rather a more frightening proposition—the subtle manipulation of desires over time.

Political power found its ally among those in the twentieth century who, as Weaver suggested, had lost the foundation necessary to find meaning in other areas. Hayek states in *The Road to Serfdom*: "Probably it is true enough that the great majority are rarely capable of thinking independently, that on most questions they accept views which they find already-made, and that they will be equally content if born or coaxed into one set of beliefs or another." Weaver's image of the

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hunted finds a recurring place in *Sunshine*—the elites of each regime relieve the stress of their day jobs by hunting wild boars in an increasingly brutal manner. Hunting for animals, and later for scapegoats, provided the framework by which political leaders and their citizens led their lives. Unfortunately, as depicted in the film, the Jews suffered this role time and time again despite initial glimmers of hope from those newly in power.

The high note as the film closes is the arrival of democracy. Having represented humankind through a century of the state's attempts to remold its citizens, the final Sonnenschein we encounter emerges with a wary optimism from the tyrannies of the past.

It is in reflecting on the lessons portrayed in *Sunshine* that we must ask ourselves whether we have truly advanced beyond those windblown modern men of old. If not, then perhaps an increasingly complacent allegiance to abstract democratic ideals may not prove sufficient to forestall a repetition of the last 100 years' tragedies. A greater awareness of seemingly insignificant political shifts may be long overdue. "It may well be true that our generation talks and thinks too much of democracy," Hayek reflects, "and too little of the values which it serves. Democratic control *may* prevent power from becoming arbitrary, but it does not do so by its mere existence." □

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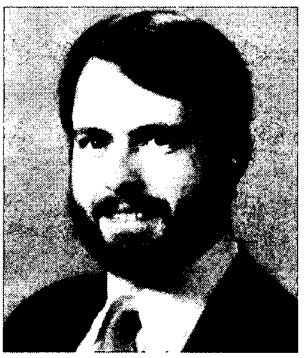
IDEAS ON LIBERTY
JULY 2001



Balkan Stupidities

NATO officials are shocked—shocked!—to find ethnic Albanian guerrillas on the march against Serbia and Macedonia. The alliance is considering military action against insurgents who want a greater Albania. Washington should cut and run.

In 1998 ethnic Albanians in Kosovo were pressing a brutal campaign for independence against Serbia. U.S. Ambassador Robert Gelbard labeled the insurgents "terrorists."

But by early 1999 Washington had decided that they were freedom fighters. Normally unconcerned about mass violence abroad, at least when committed by U.S. allies (Turkey versus Kurds, Croatia versus Serbs) or significant powers (India in Kashmir, Russia in Chechnya), Washington decided to combat ethnic cleansing.

It attempted to impose an unrealistic *diktat* on Yugoslavia; when that failed, Washington, with NATO in tow, lent the Kosovo Liberation Army its air force. But, explained Western diplomats, they only supported Kosovo's autonomy within Serbia. And they expected the Kosovars to make up with the Serbs.

No such luck. Ethnic Albanians kicked out most of the Serbs. They felt they had won and, notes *Toronto Sun* columnist George Jonas: "Not unreasonably, they want to claim the fruits of their victory, which they don't see as running for office in UN-supervised elections. They see it as ruling over an independent Kosovo."

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So the violence continues. Reports the *Washington Post*: despite NATO's efforts, "Albanians manage regularly to terrorize Serbs." In February Albanians blew up a bus of Serbs visiting family graves, killing seven.

The problem is not just Kosovo. Although the KLA has formally disbanded, the Liberation Army of Presovo, Medvedja, and Bujanovac (UCPMB) has sprung up in Serbia north of Kosovo. Since the buffer zone imposed on Yugoslavia by NATO bars the Yugoslav military, it acts as a sanctuary for UCPMB guerrillas.

Trouble in Macedonia

Ethnic Albanian insurgents also are active in western Macedonia, forcing Skopje to call up reserves and move tanks into threatened areas. "The danger of civil war is there; we are very close to a major conflict," warns Carlo Ungaro, a representative of the Organization for Security and Cooperation in Europe.

NATO officials don't get it. One German military officer complained, "Betrayal does not come close. They have spat in our faces." One diplomat blames the West, which "has never made it clear enough to the Albanians that we are not there to ensure Albanian independence and promote Albanian interests, but we're there to promote our interests, which are a stable Balkans."

Why, however, should Albanians care that NATO wants stability? They want Kosovo's independence.

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That was always evident to anyone who knew anything about the Balkans, unlike former Secretary of State Madeleine Albright, for instance. Now NATO faces potential disaster. Carl Bildt, the U.N.'s envoy to the Balkans, admits, "I am very alarmed. This is one of the worse pieces of news to come out of the Balkans for many years."

The NATO ambassadors agreed that more troops should be sent to Kosovo, but member states refused to commit more troops. NATO did decide to shrink the buffer zone outside of Kosovo and cooperate with Serb forces.

Even this is a prescription for war, however. Lt. Brandon Griffin of the 82nd Airborne told the *Washington Post*, "As the [buffer zone] gets smaller and there's less room for them to maneuver, I think it'll get hotter."

The Bush administration also moved 150 soldiers closer to the Kosovo-Macedonia border. Secretary of State Colin Powell told a congressional hearing that "[we] are doing what we can, short of becoming one of the major belligerents in the contest." But already American forces have gotten into a gunfight with rebels.

Some enthusiasts of the earlier war with the Albanians now want to go to war against them. Opines *USA Today*: "A strong, swift U.S. response is needed, not just in Macedonia but against ethnic-Albanian aggression generally."

Ethnic Albanian aggression? Which differs from the KLA's activities in 1999 precisely how?

The *Wall Street Journal* observes that Slobodan Milosevic is gone. True, but the Albanians aren't impressed. They are nationalists, and their ethnic identity transcends Yugoslavian or Macedonian citizenship, Milosevic or not. A former KLA leader in Kosovo explains: "We will remain a threat to stability because for us the status quo is unfair."

Macedonian rebels cite grievances—a desire for education in Albanian, for instance—that seem important enough for them to take up arms. One of them told the *New York Times*: "I am fighting for the liberation of my territory."

Still, "We should not allow borders to be redrawn by force," says German Foreign Minister Joschka Fischer. Charming sentiments, but that is precisely what NATO did in 1999. It employed overwhelming military force against a state that had neither attacked nor threatened to attack any member, effectively detaching Kosovo from Serbia.

The *Journal* also says the insurgents are bad guys: "as has been recently reported, the [KLA] is responsible for the murders of ethnic Albanians whose politics are less radical than its own. This is a tactic employed by other terrorist groups."

Including the KLA in 1999. And it is the same tactic now used by former KLA members fighting for political power and control of Kosovo's rich criminal enterprises.

"It has to be said that force may be the only language the Albanian extremists understand," one British officer told the *London Times*. That is what the Serbs believed—for which the West punished them.

Getting further involved would be disastrous. So far NATO is play-acting. The alliance will have to do far more than move a few soldiers closer to the border. As one Western diplomat admitted to the *New York Times*: "Confronting Albanian extremists could cost lives, which is the Pentagon's nightmare, and it could make NATO forces a target in Kosovo itself."

The United States has nothing at stake that warrants such a risk. When meeting British Defense Minister Geoffrey Hoon, Secretary of Defense Donald Rumsfeld correctly declined to call the Balkans "vital." He did, however, say that "Certainly the region is important or we would not have forces in the region."

But it isn't even important, especially to America. The Balkans are peripheral, a backwater far from the western European states. Still, the administration worries about alliance solidarity. As Powell declared, when pressed by Lord Robertson, NATO's Secretary General, "We went in together, and we will come out together."

If the Albanian Kosovars "ever expect to rule themselves, much less be independent, they should show some responsibility," exclaimed one British military officer. But it's a little late to expect NATO's allies to learn better manners. The West sowed the wind; it is now reaping the whirlwind.

America should bring its troops home. □

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IDEAS ON LIBERTY
JULY 2001

Drastic Measures: The Metric Assault on American Standards

by Peter Seymour

Nothing is more contrary to the organization of the mind, of the memory, and of the imagination. . . . The new system of weights and measures will be a stumbling block for several generations. . . . It's just tormenting the people with trivia."

Such was the opinion of Napoleon about a novelty concocted by the Paris Academy of Sciences in the midst of revolutionary fervor: the metric system of measurement.

But that tormenting system, which France's emperor refused to inflict, has been forced on British citizens by their own legislators, yielding yet again to pressure from European Union bureaucrats. With the British bulldog rolling over to this cultural intrusion, one wonders if the United States will go the extra mile to defend the yardstick.

Since America's infancy, metric missionaries have been frustrated by our steadfast resistance to being converted. They've blamed public ignorance, apathy and stubbornness, unenlightened industry, meager government funding, and more. But beneath the surface, our enduring allegiance to the U.S. Customary System of Weights and Measures is rooted in a commonsense, even if largely intuitive, preference for this finely honed system of inches, pounds, quarts, and degrees Fahrenheit.

Most Americans can remember, from the late 1970s, when U.S. metrication (metric conversion) was proceeding like a five-year plan commanded by the Kremlin. Wall charts and study guides in grade schools indoctrinated students like me about the "superior" and "more scientific" SI (Le Système International d'Unités: the *new* and *improved* version of metric). Although belittled as a hodgepodge of historical oddities, our customary measurement system withstood insults and assaults from the "inevitably global standard," the most visible vestiges of which are the "kph" markings on speedometers, the FDA-required nutrition labeling on packaged goods, and the liter-based soft drink bottles.

While compliant Canadians dove head first into metrication, we recalcitrant Americans ignored and laughed at it until it slinked away. Perhaps you saw the "Saturday Night Live" skit that lampooned the marvels of the metric alphabet, comprised of only ten letters! J, K, L, and M were combined into a single character.

A quarter-century later, the metric crusade looks as quaint as the "Duck and Cover" campaign of the 1950s. But while the communists' dream of world domination has faded away, the metric zealots persist in threatening our economic and personal freedom.

In their decades-long "re-education" to metric, defenders of British weights and measures—and of British sovereignty—recently suffered a drastic setback. Beginning in January 2000, merchants throughout the United Kingdom were ordered to give priority to the gram, liter, and meter in their measuring,

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labeling, and oral communication, subordinating their traditional ounce, pint, and foot to a supplementary status.

According to the London-based *Sun* newspaper, whose "Save Our Scales" campaign regularly features small shopkeepers who run afoul of the metrication program and incur fines and confiscation of their imperial scales, Sunderland police and "trading standards officers" on February 16, 2000, made an undercover purchase of a pound of bananas for 34 pence, from Steven Thoburn, a local greengrocer. He was thereupon arrested for weighing the loose produce in pounds instead of grams. A British court convicted Thoburn last April. Fines and further court costs of at least $150,000 are anticipated. But the case will be appealed.

"I'll serve my customers the way they want," insisted Thoburn, who, having been dubbed the "Metric Martyr," raised over $40,000 for his defense in this test case, the first trial of its type. "But I've yet to find anybody who's asked for anything in a metric way."

Despite renewed sales pitches, regaling the glories of base-ten measurement and the progressiveness of global conformity, Americans aren't buying metric. We remain committed to the familiarity, versatility, and greater accuracy of measurement practices that date back to the pyramids of Egypt—built with the same inch as found on a schoolboy's ruler.

Metric in America

Starting back in 1790 Thomas Jefferson, then secretary of state, recommended that Congress introduce a decimal-based measurement system. While not proposing a specific scheme (the metric system was formalized nine years later), Jefferson did advise that any new base units should resemble those already in common use wherever possible. Congress put the issue on the back burner, thus beginning a policy of benign neglect that continues to the present. In the first U.S. metric study in 1821, John Quincy Adams, also as secretary of state, reported to Congress: "Weights and measures may be ranked among the necessaries of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; to the distribution and security of every species of property; . . . The knowledge of them . . . is among the first elements of education, and is often learned by those who learn nothing else, not even to read and write."

Adams went on to advocate the metric system as a national standard, but Congress again left well enough alone. Forty-five years elapsed before Congress supplied each state with a set of metric weights and measures as it authorized nationwide use of the new system on a voluntary basis, thus expanding our choice of measurement methods. In 1875 the United States became one of 17 nations to found the International Bureau of Weights and Measures, based on metric. In 1893 the U.S. Bureau of Standards adopted metric as its "fundamental system of standards," which legally defined customary units in terms of metric equivalents. And that's pretty much where things sat for the next 75 years.

Today, the use and importance of standardized measurement is vastly greater than at the dawn of the industrial age. Geodetic, topographic, climatologic, political, and road maps of the entire earth have been meticulously calculated with customary coordinates and charted in customary units. Surveys are the conceptual infrastructure for the layout of streets, highways, railroads, and parks; for the engineering of bridges, tunnels, canals, and dams; for the installation of pipelines, water mains, power grids, and cable networks; and for the positions of navigational beacons and the orbits of satellites.

Customary units, in blueprints and hardware, are built into our homes, ships, skyscrapers, churches, monuments, and historical landmarks. The construction and operation of nuclear power plants, airports and aircraft, military equipment, and the International Space Station, to name a few, are predominantly based on customary specifications. Our system is communicated through countless labels, cookbooks, manuals, textbooks, schematics, menus, and traffic signs. Preserved in our literature, songs, and movies, thriving in the daily conversations and habits

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of a quarter-billion U.S. professionals, consumers, and students, customary measure serves the diverse needs of everyone from carpenters to chefs, children to rocket scientists.

With such an enormous investment in physical and human capital, there ought to be a convincing reason to justify our suffering the stupendous costs, confusions, and hazards of drastically altering our measurement system.

One Size Fits All

The primary contention of metric advocates is that adopting a globally uniform system of measurement would greatly benefit the U.S. economy. Fluency in metric, the Esperanto of measurement, would facilitate industry and trade by increasing our nation's exports, competitiveness, productivity, and employment. This one-size-fits-all thinking, typical of metric missionaries, is plausible, but such assertions are thoroughly refuted by experience and reason.

The U.S. General Accounting Office (GAO) is a respected government watchdog. Its *Metric Report of 1990* summarized the major economic burdens of a forced U.S. metrication, and devastated pro-metric arguments with careful analysis:

> Imports of metric products would increase because metric products required for U.S. conversion would have to be obtained from other countries. Furthermore, due to the additional costs of conversion, U.S. products would be more expensive than imported products that are already metric. Foreign countries would benefit from broadened markets and new economies of scale due to increased production and lower operating costs. The United States would also be flooded with customary products produced by other countries to meet the continuing demand by the public for goods during the conversion period.

A pamphlet from Americans for Customary Weight and Measure (ACWM), a grassroots organization,* passes along the warning: "Thousands of workers would lose their jobs and older workers would be displaced. Metric conversion would require massive retraining and would deprive the country of workers with valuable experience and the intuitive feel for measurement upon which craftsmen, mechanics, engineers and many other workers depend" ("Realities of Metrication" by Thomas A. Hannigan, International Brotherhood of Electrical Workers, 1977).

The preamble of the U.S. Metric Conversion Act of 1975 enumerated the costs of clinging to our provincial ways, including: "3. World trade is increasingly geared to the metric system of measurement. 4. Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its non-standard measurement system."

But, reassuring the unconverted, the GAO noted, "Worldwide usage of U.S. customary standards is still much greater than that of metric standards." Although U.S. usage accounts for much of this, customary standards persist internationally in numerous forms, ranging from any use of latitude and longitude, to industry-specific units such as troy ounces and carats, to any production whose actual dimensions are tooled on customary units.

To clarify the last, the most successful photographic film format continues to be manufactured to its original specification of exactly 1-3/8 inches in width. The customary standard of this American invention has been eclipsed by its subsequent relabeling as "35mm," an approximate metric equivalent. This kind of soft conversion succeeds in giving the appearance of metric prominence, of greater precision, and of foreign industrial clout, but it doesn't alter the hard reality that about two-thirds of global industrial output remains based on customary specifications.

In a shocking retort to those who scoff that America stands alone among industrial nations in rejecting metric, the GAO concluded, "The United States should not risk its industrial success, obtained under the customary system, by changing to a new system."

*Americans for Customary Weight and Measure, P.O. Box 5280, Wiscasset, Maine 04578.

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In spite of this unqualified verdict and the unswerving popularity of customary measure among U.S. businesses and consumers alike, the metric system is the "preferred system of weights and measures for United States trade and commerce," or so it was ordained by Congress in Public Law 100-418. In fairness, because this provision was furtively buried in the two-inch-thick Omnibus Trade and Competitiveness Act of 1988, it is doubtful that any congressman knew he was voting for it. Less excusably, by signing Executive Order 12770 in 1991, President George H. W. Bush directed federal agencies to proceed on their meddlesome path of advancing "the national goal of establishing the metric system as the preferred system for the U.S. government."

If It's Better, the Free Market Will Buy It

In 1993 former Senator Claiborne Pell of Rhode Island, wrote a letter to President Clinton in which he pushed for further metrication by stating, "I am sure that you will agree that in order for this nation's businesses to be truly competitive with the rest of the world, we must play by the same rules." That comment is relevant to Olympic competition, but in the economic sphere it gives the three false impressions that measurement is a rule that requires conformity, that such conformity has advantages regardless of which rules are selected, and that the advantages of such conformity must be facilitated, if not mandated, by government because they will inadequately be sought out by market participants.

The rules that optimize trade and competitiveness are those that validate property rights and private contracts, while deterring infringements and fraud. Pell's deception was in representing a measurement system as a principle of free markets, rather than as it truly is: a tool and means of communication. As such, options are desirable because measurement functions best when properly suited to its task.

If markets were like sports, with businesses as teams, competitiveness among nations, as among separate leagues, would require uniformity of rules, which might include measurement standards. Although sports and commerce have some similarities (for example, competition among and cooperation within teams/firms, and success rewarded with points/profits), markets do not specify procedures, limits, and goals. The free market is an open-ended discovery process wherein the freedom, of all consumers and producers, to choose a measurement tool, among many other options, is a vital means of seeking out efficiency, convenience, pleasure, and safety.

Any American business interest could and would label, package, and produce in metric voluntarily and on its own if doing so were profitable as measured by the customary units of dollars. "The competitiveness question is a non-issue. U.S. manufacturers, large and small, make their products in whatever units are required—as did Japanese makers in the fifties (and still)," says Patrick P. McCurdy, a consultant for the American Chemical Society and editor of several trade journals. (See his "I'm Just Mild About Metric," *Today's Chemist at Work*, June 1994.)

Naturally, compliance with industrial standards is often essential for a company's survival. Rival firms have even freely created format and operating standards when they find it mutually advantageous to do so. With no government prodding, Apple and IBM agreed to collaborate for just this reason in the mid-1990s, but the practice has a long history.

In the mid-nineteenth century, railroads sprang up to serve regional freight and passenger needs. Because these ventures were mechanically as well as commercially autonomous, the gauge (width between rails) had not been standardized. A problem arose when enterprises prepared to cooperate, but their tracks didn't match up. Due to the increasing pressures of the free market, these separate lines simply adjusted their gauges—sometimes in one weekend—to the prevailing customary standard of 4 feet 8.5 inches.

American railroads even converged in creating a measurement system to synchronize schedules. Before the nation was connected by instantaneous communication and one-week coast-to-coast rail travel, "local time" meant that each town set its clocks to high noon. This made the charting of timetables a daunting task. So in 1878 railroad executives

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simplified roughly 100 different time zones into today's Eastern, Central, Mountain, and Pacific times.

Don't Give An Inch!

Harassed by means dismayingly reminiscent of those presently persecuting Mr. Thoburn, the post-revolutionary French citizen yielded to the meter, gram, liter, and centigrade thermometer, but the complete metric utopia, originally envisioned with a ten-hour clock, ten-day week, and 400-degree circle, was never consummated. Thanks to informed opposition and our healthy, intuitive resistance, Americans have never given an inch . . . thus far. But at the Metric Program Office (annual budget, $500,000 to $600,000 per year), our tax dollars continue to employ professional meddlers who view our freedom as a nuisance and take advantage of our trusting assumption that if something ain't broke, nobody's trying to fix it.

Fortunately, there are many easy ways for anybody to stand up for the foot. The vast majority of weighing and measuring is an integral part of our daily routines, our language, and our culture. Substantial power is in our hands. Personally, I use customary measure wherever optional and tell others about the precision, practicality, and poetry of our traditional measurement system. In a letter to the *New York Times*, I thanked an author for writing "one-fifth of an inch" when other reports on the same surgical procedure wrote "five millimeters." Any American publisher or broadcaster can independently favor customary measure as an editorial policy and convert metric into our language if necessary.

Like other conflicts of common sense versus simplistic dogma, the metric problem was contrived by government. But unlike a typical program, compulsory metrication doesn't derive strong support from a particular region, industry, race, age, income group, and so on. Just the opposite: The fact that so many people have so much to lose from disruptions to their customary system of measure presents a rare and tremendous opportunity for everybody.

Republican legislators can reassert their conservative and patriotic values, while Democrats will win appreciation from their trade-union base. Applause would even come from libertarians, because they trust the individual, and Greens, because they mistrust international corporations. With overwhelming support, the 107th Congress and President George W. Bush can readily free us all from the metric menace by rescinding his father's Executive Order 12770, by repealing Public Law 100-418, and by canceling the Metric Program Office (of the National Institute of Standards and Technology).

Today's metric proponents aren't mounting a frontal assault like the one in the late 1970s, much less confiscating the scales of your neighborhood grocer. Having learned from past failures, they've implemented a stealthy strategy of pushing through small changes to nudge out nonmetric options. The New York State Highway Department, encouraged by federal initiatives, switched to metric in the 1990s with hopes of being a leader in a national trend. U.S. metrication is one of those issues that can slide from seeming too trivial to bother with today into being too large to reverse tomorrow. So remember, an ounce of prevention is worth a pound of cure.

Even as our federal government exhorts, "The uncertainty is not whether to move to the metric system, it is how and when to make the move" (U.S. Metric Programs Board Pamphlet), we can take heart in the words of ACWM metrologist Bob Falk: "Our system of measurement is not a haphazard collection of archaic units or the product of committees of sheltered academics with no practical experience in the real world. It's the result of more than seven thousand years of research and development by billions of people whose lives and livelihoods depended on useful, reliable measurement."

And that is why, so long as Americans defend their freedom, the measurement issue will never be decided in a government office. It will be settled at the Home Depot checkout counter, in grocery stores and kitchens, on the desks of editors and draftsmen, on shop floors, highways, and the moon, where thanks to missions achieved entirely with our outdated pounds, gallons, and miles, America once again stood alone. □

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IDEAS ON LIBERTY
JULY 2001

Rights in Ideas Infringe Rights in Tangible Property

by Ilana Mercer

Prior to the U.S. Court of Appeal's decision in the Napster case, all indications were that the parties to the litigation were adjusting to a reality in which copyright might become a thing of the past.

TVT Records, one of the largest U.S. independent record labels, had become the first label to drop its copyright infringement lawsuit against Napster. TVT upstaged Bertelsmann AG, which strategically remained party to litigation against the song-swapping outfit while promising to forgo action once Napster transformed itself into a fee-based membership service.

Edel Music, too, had hopped on board. The players seemed to have sensed that they could no longer stem the tide: New technology had blown the lid off the anti–free-market protectionism that is copyright and patent law. In explaining TVT's change of heart, president and founder Steve Gottlieb said: "I am afraid that copyright owners' resistance to finding workable solutions with Internet music providers may result in consumers, artists, and the industry itself ultimately being harmed. . . . It is high time that the industry embraces a service that the public has so emphatically said they want."

Once the dust settles, TVT and Napster will offer Napster's 45 million-plus users the opportunity to exchange copyrighted music files online under a business model that compensates recording artists and record companies.

In the decision that followed these developments, the U.S. Court of Appeals for the Ninth Circuit found Napster liable for contributory and vicarious copyright infringement. Users were said to be engaging in direct infringement of the plaintiffs' distribution and reproduction rights. The court conceded that Napster is capable of, and has the potential to, provide other non-infringing uses. While this would have acted as a legal defense against contributory infringement, it was outweighed by the fact that Napster possessed actual, specific knowledge of direct infringement.

The judge found that Napster was able to locate the infringing material and hence capable of properly policing its system. This, combined with a direct financial stake in the infringing activities, caused the court to find Napster liable as a vicarious offender as well.

One hope was that the Audio Home Recording Act of 1992 (AHRA) would grant Napster users protection on the grounds of "fair use," since it allows audio music swapping for noncommercial use. This too failed. Because they got for free something they would ordinarily have paid for, Napster users were deemed to be engaging in commercial use. The judge further ruled that since a Napster user copies an entire work, he is harming the market by (1) reducing CD sales among college students, and (2) making it harder for the record companies to enter the arena of digital downloading.

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This standard underscores that copyright aims at maintaining a market for certain interests through the force of the law, a good point from which to segue into the crux of the Napster saga: Are the legal rights that politicians gave to originators of ideas—as embodied in music, software programs, books, or practical inventions—justified? And what property rights should the law protect?

The answer depends on the definition of property and what makes it ownable.

Tangible goods, we all agree, are properly the objects of property rights. This is because they are economically scarce. But the notion that the mere act of creation confers ownership is problematic. Drawing on Lockean principles of homesteading, property theorists like attorney N. Stephan Kinsella reject it in favor of economic scarcity as "the hallmark of ownable property."* Scholars like Sir Arnold Plant and Tom G. Palmer, along with virtually all property theorists of the Austrian school, recognize that scarcity precedes property.

Economic scarcity results when my use of an item conflicts with your use of it. While an abundance of computers can be had on the market, my use of this particular PC excludes your use of it. We might come to blows were we both to insist on occupying the thing. If I could conjure computers with a magic wand, they would be abundant, not scarce, and it would be immaterial if this one were removed. In the case of scarce resources, property rights are essential to prevent conflict.

Intangible Goods

Not so for intangible things such as the ideas copyright and patents protect. However valuable, ideas are not economically scarce: My listening to a piece of music doesn't conflict with or exclude your doing the same. Ditto for a book: A copy made of the thing doesn't remove from its author the configuration of ideas that is the book.

Granted, copyright law protects only the physical instantiation of an idea. Humming a song won't secure copyright in it. The idea must be written down to become fixed in a tangible medium. Here is the nub: Copyright is vested in a physical object that can be owned quite legitimately by someone other than the author of the book, the singer on a CD or the code writer of a software program. It is in the rightfully owned property of others that the copyright owner acquires a stake.

Say I write a novel and you decide to film a movie based on my novel's plot, using your own filming equipment. Were I only to proclaim I owned the ideas in my novel, I would merely be exercising my free speech. But when I want to prohibit you from using your equipment as you please, and can use the force of law to do so, I am violating your property right. Under the law as it now stands, my act of creation is all it takes for me to be able to exercise control over you.

Put another way, imagine you could reproduce at almost no cost copies of a scarce, tangible item like a desk I designed. Would I be justified in prohibiting you from using your copy of my desk simply because I possess the original item? Would it be right to demand that you pay me a stipend for every copy of my desk you made using your own desk copier, so that I might secure for myself a tidy source of revenue? If you dare resist my attempts at extortion, I will galvanize the law. After all, you are cutting into an income I imagine I am owed.

Copyright redistributes wealth, as the workings of the 1992 Audio Home Recording Act makes evident. Here, manufacturers like Yamaha or Philips that market digital audiotape recorders and CD-R burners must pay a statutory royalty as a penalty for making devices that could foreseeably be used to infringe copyright. Such manufacturers must pony up for the potential undermining of the value of copyrighted material. Notwithstanding the incoherence of assigning rights in some imagined value the copyrighted material may have, wealth here is distributed from manufacturer to music industry. Similarly, consumers who purchase blank recording media must pay special excise taxes to the music industry.

No less egregious is the patent monopoly. Consider the Prozac patent, recently—and

*See N. Stephan Kinsella, "Against Intellectual Property," *The Journal of Libertarian Studies*, Spring 2001.

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surprisingly—struck down by an American court. Ordinarily, the patent monopoly held by Eli Lilly & Co. would have prohibited competitors from using their own property to make generic copies of the drug. This is all a patent is; it grants to the holder no more than the right to prohibit someone else from implementing an invention he may have arrived at quite independently.

Some conservative organizations, abandoning free-market principles, defend patent monopolies. The Fraser Institute, for example, has fiddled with econometrics in an attempt to show that denying Eli Lilly & Co. the Prozac patent monopoly causes a net loss to the economy, reducing wealth and the incentive to invent. Such staple utilitarian arguments, as Mr. Kinsella demonstrates, are not only unjust and unprincipled, but also incoherent.

The Fraser Institute compared the $3 billion savings to consumers from the introduction of competition from generic drugs with the $66 billion loss to pharmaceutical company shareholders after the removal of Eli Lilly's patent protection. It then concluded that patent monopoly benefits the economy.

But as economist Ludwig von Mises wrote, "Just as there is no measurement of sexual love, of friendship and sympathy, and of esthetic enjoyment, so there is no measurement of the value of commodities." Neither is there a "method available to construct a unit of value." Values are subjective. While consumers gained from the removal of the Prozac patent monopoly, others—notably investors—lost. By what shift of logic does an expert decide that the loss to one party is more important than the gain to the other? Clearly, to sanction state-granted, exclusive monopoly privileges on the central-planning grounds that this redistribution of wealth promotes prosperity in society is not an enduring basis for principled legislation.

Legally Binding Promises

Rather than resort to discredited central planning and its attendant specious measurements to justify imposing patent monopolies, conservative organizations should rediscover the advantages of the free market. It offers other, much simpler, and much more elegant options—contracts are among them—to ensure that the originator of an idea receives a share of the profit. Under certain conditions and with certain provisos, promises made between parties become legally binding. Employees in high-tech companies, for instance, are bound by contract when they agree to keep quiet about trade secrets. A variety of contracts are available to allow parties to protect their assets and profits. Confidentiality, nondisclosure, royalty, and noncompete agreements can be expected to proliferate in copyright-free commerce. These arrangements differ from the current copyright regime in that they bind only parties to the agreement. Intellectual Property (IP) rights bind everyone.

Given that protectionism distorts the market, its removal needn't be dreaded, except by those who turn to government to capture wealth. Imitation haute couture and knock-off fragrances, paperbacks, and drive-in movies have not decimated the original articles or industries they emulated, although they may have scaled them back somewhat. In the case of music, no protection may indeed mean fewer of the three-chord warbles that currently pervade the industry. Why is that such a bad thing? And who says someone has a right to make others provide him with a market? Certainly no true free-market proponent.

IP rights are invariably enforced in the tangible world of scarce resources. Recognizing property rights in nonscarce intangible resources diminishes rights in tangible scarce resources. Laws that elevate rights in ideas to the extent they override rights in tangible property must give pause—more so given government's penchant for imbuing things with economic value (such as occupational licenses and cable franchises) so as to grant monopoly to one interest or another.

The copyright system ought to be abolished because there can be no justification for the use of force against legitimate property owners. And force is, very plainly, what flows from the enforcement of the law. Since ideas should not be treated as property, laws that target those who have not violated person or property are wrong. □

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IDEAS ON LIBERTY
JULY 2001

The Bought Mind

"No pious platitudes . . . can get over the fact that a bought mind is a spoiled mind."

—GEORGE ORWELL

Soon after his inauguration, President George W. Bush declared: "When we see social needs in America, my administration will look first at faith-based programs and community groups, which have proven their power to save and change lives." Critics lost no time assailing the proposal as a threat to the separation of church and state. There is, indeed, cause for alarm here, but the real danger lies elsewhere.

The Founders' interest in separating church and state must be seen in its historical context. During the centuries preceding the American revolution, the secular rulers of European states represented, and were expected to represent, the religious interests of the majority of their subjects, Catholic or Protestant. The result was entrenched religious persecution and war. The Founders wanted to preserve the moral authority of the churches, while creating a system of secular rule indifferent to the specific religious denomination of particular citizens. All they said on the subject, let us not forget, was that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

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Why did the Founders not mention money, that is, the government's use of taxes to support religious organizations? The answer is simple and important. First, because religious bodies, exemplified by the Vatican, derived their income directly from their members, collected their own funds, and were often quite wealthy. The Mormon church and the Christian Science church are recent examples. Second, the Founders did not mention money because it never occurred to them that one day the United States would be so large and prosperous, and the government would tax the citizenry so heavily, that it could, if it chose, control anything it wanted by supporting the activity with money.

Responding to critics, a Bush adviser cited "provable results from faith-based social programs that address problems like substance abuse." Mr. Bush himself says his faith saved him from abusing alcohol. No one can doubt the power of religious faith to alter human behavior. Indeed, the proposition that religion influences behavior is a sort of pleonasm; in a manner of speaking, that's what religion is for. Christians speak of "deciding for Jesus." Similarly, people decide for and against drinking or smoking. But decisions are not diseases. No one decides to have a real disease, such as melanoma. Nor can a real disease be effectively treated by faith healing.

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Sooner or later we will have to confront the question, is ingesting illegal drugs a disease? At present, the American Medical Association, the American Psychiatric Association, and the American government maintain that it is. That is not what they maintained before World War II. If drug abuse is a disease, like diabetes, then its effective treatment by prayer is nothing short of a bona fide "miraculous cure," such as the Catholic Church requires for beatification. And if drug abuse is not a disease, then the American Medical Association, the American Psychiatric Association, and the American government are committing a colossal fraud against the American people.

Using, abusing, and not using drugs are decisions. Using a drug (or sex) solely for the purpose of giving oneself pleasure used to be called a "sin" by Puritans, and a "bad habit" by persons less certain about God's will. They were on the right track. Drug abuse is neither a disease (except metaphorically), nor a crime (unless we make it so). Drug abuse is a problem of desire: if people did not want drugs, there would be no drug users and no drug abusers. The desire for drugs has its source in two of the now all-but-forgotten "deadly sins," lust and gluttony. People lust after the pleasures drugs can give, and abuse drugs as gluttonously as they abuse food, sex, and often other people.

Not So Separate

Church and state have never been, and could never be, as separate as many self-styled atheists like to believe. The danger in the government's paying faith-based organizations to treat drug abuse is not so much that it violates the separation between church and state. It lies, rather, in that the money defiles the integrity of faith-based institutions. The adage "He who pays the piper calls the tune" has not yet been shown to be false.

Perhaps even more important, the Bush program gives further impetus to the tendency to conflate decision and disease, sin and sickness, faith healing and scientific medicine. The result is the turning of the country into a therapeutic state, the "compassionate and scientific" rule of medical discretion replacing the "harsh and unscientific" rule of law.

Examples of this metamorphosis are all around us. A so-called sex offender is apprehended, tried, found guilty, and sentenced to a long prison term. He serves his sentence. Is he set free? No. He is re-imprisoned, in a "hospital." The Supreme Court rules that the re-imprisonment does not constitute double jeopardy, because it is a "civil" procedure, intended as treatment, not punishment.

In a *Wall Street Journal* editorial, a prominent drug-abuse expert writes: "As a psychiatrist who treats addicts, I have learned that legal sanctions—either imposed or threatened—may provide the leverage needed to keep them alive by keeping them in treatment. Voluntary help is often not enough." The essay is titled: "For addicts, force is the best medicine." The use of physical force by one individual against another is a crime called assault. The use of legal force by the state against the individual is called "law enforcement." It is becoming the badge of intellectual sophistication to call coercion "treatment," provided the subject is regarded as a "patient," and doctors do the punishing.

The day Mr. Bush announced his plan for faith-based drug treatment plans (January 30, 2001), the Associated Press reported that the actor Robert Downey Jr. had been re-arrested for a violation of the drug laws. "We're just trying to figure out what's best for Mr. Downey," said—who? His physician? No. His lawyer? No. The words were those of Deputy District Attorney Tamara L. Capone [sic], the prosecutor whose job, presumably, is to punish him. This is not the way prosecutors speak about inner-city black youths arrested for drug offenses. For some, three strikes and you are out. For others, whatever is "best." The modern goddess of justice is not blindfolded. She looks at brain scans. The real danger in the faith-based programs of "help" proposed by President Bush lies in subverting religion, obstructing clear thinking, and replacing liberty under law, with despotism as medical discretion. □

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IDEAS ON LIBERTY
JULY 2001

Adventures in Zoning

by Andrew P. Morriss

I live on a quiet dead-end street in a small suburb of Cleveland. A local developer's plans for a little vacant lot across the street from my house recently led me into the arcane world of municipal land-use planning. The story of this lot illustrates several important lessons about how governments actually function.

The lot in question once held a house (the ruined foundation still stands) that was destroyed years ago. According to a neighbor, it was the home of two stereotypical elderly, somewhat batty old ladies and many, many cats. In addition to the cats, one sign of their battiness was the old ladies' insistence on holding large amounts of cash on the property. When a supposedly well-meaning relative had the house condemned and the residents moved into an old folks' home, members of the public were allowed to tear down the house brick by brick in search of the cash.

The lot then sat there quietly until a developer bought it and decided to build five duplexes—a number that my neighbors and I thought excessive for the lot size and our small street. So we trooped down to a planning board meeting to learn what our options were.* People yelled, gavels were banged, and we learned that . . . our options were not especially satisfactory. It turned out that the zoning ordinances permitted five duplexes on the lot in question and, the town officials informed us, there was nothing they could do about it. The meeting was not a total waste of time—we discovered that the town "master plan" did not include our street at all!

The public meeting produced pressure on the developer to meet informally with the neighbors to discuss our concerns. Why? Because our neighborhood's city councilman was angry that the developer had not called him before announcing his plan to the neighbors. The councilman got a series of calls from constituents about an issue he knew nothing about—an embarrassing event for a councilman.

As often happens, one good meeting leads to another, and soon we were sitting down informally with the developer and a town planner. At this meeting we heard a strange address from the bureaucrat, who got all dreamy eyed at the duplex plans. Our town "needed" the duplexes, he told us, since they would have first-floor master bedrooms and the lack of "enough" such housing was hurting the town. How? Older residents were moving to neighboring towns to find homes that didn't have stairs.

Keep in mind that I live in a continuous string of suburbs—the only noticeable differences between towns are the tax rates and the

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*I know, I know—as a libertarian I shouldn't even have been at a planning board meeting (unless I was there to engage in civil disobedience)—the developer owned the property and he ought to be able to do what he wanted with it. But since my town forces me to do all sorts of silly things with my property, I wanted to be sure he wasn't getting out of any silliness on his.

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little signs at borders signed by each mayor welcoming visitors to his fiefdom. These elderly folks weren't moving to Arizona in search of that elusive first-floor master bedroom or even very far within Ohio. They were just moving down the street. Was it the emotional burden of the loss of these older folks' sentimental attachment to the town that bothered our friendly local planner? Was it a craving for just the "right" mixture of old and young residents, to satisfy some urge to create a utopian community?

No—it was that these old folks would then die as residents of another town. Ohio law, it turns out, awards a share of the state's estate tax to the town where the deceased resided. As our town's population aged, people moved out and other towns got "our" share of these estate-tax revenues. (Since we just voted down a local income-tax hike, the city fathers are especially sensitive on this point.)

The Master Plan

And what about that "master plan" that suggested we didn't even exist? We needn't worry, our new friend assured us, that the town had any evil designs on our street just because it doesn't exist on the master plan. That was just the town's way of telling developers that *if* they could buy up the properties on the street, the town would be happy to change the zoning from residential to something more suitable to accommodate other forms of land use (perhaps a facility for wealthy and suitably frail elderly people?). The town wouldn't force us to sell out; it just wanted to encourage interest in our street.

The "master plan" was thus just a signal that the price for rezoning our neighborhood was especially low. Of course, that master plan also has an impact on the price of our houses now—why invest in a home on a street that is being advertised as the equivalent of a Kmart bluelight special? And given the sad history of municipalities forcing people out of neighborhoods, like Poletown in Detroit, we didn't find his reassurances too convincing.

Although when I first wrote this article it looked as though the development was a fait accompli, the town has since rejected the developer's subdivision plan (for now). It turned out that the developer failed to cross his t's and dot his i's properly. His application was riddled with minor errors that surfaced when the planning commission took a harder look at it. Given the political heat generated by the constant appearance of my neighbors at council meetings, those errors led the town to reject the application.

The history of the little vacant lot across the street teaches four important lessons about the fallacy of relying on governments to "plan" and "control" land use (or anything else):

• *Power is used against the weak and helpless, not to protect them.* The ladies with their cats got moved out of their home and had it destroyed by a mob hoping to steal their property—all with the sanction of the government. Why? They were weak (old, odd, had lots of cats) and the interfering busybodies were strong and well-intentioned (finding some cash would surely have been just a bonus!).

• *Governments don't write rules to protect private interests.* The town wasn't interested in preserving the character of my neighborhood. It was interested in getting some housing suitable for people who might die there with an estate the town could tax. As a result, the "protections" of zoning laws turned out to be nonexistent. We could have done better by banding together with the prior owner of the lot to write mutually restrictive covenants into our deeds (as was routinely done before zoning). But no one bothered because we thought we were "protected" by zoning laws.

• *Bureaucrats strive to maximize tax revenue, not social welfare.* Libertarians often worry about planners' attempts to force us to live according to some utopian blueprint. It is often much simpler—the planners just want our money. Getting people with assets to die as residents of our town was the point, not some social-engineering attempt to mingle the elderly and the young.

• *You've got to kiss the right rings to get ahead.* The developer made one mistake: he forgot to kowtow to the city councilman before handing his plans to the city officials. That omission made our councilman lose face

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before his constituents, a dangerous situation for the developer that cost him time and money. Then the developer made some typographical errors on his application—and it was all over. He didn't lose out because his development failed to meet substantive criteria—he lost out because the political calculus turned against him and he had not spent enough time proofreading his filings!

So next time someone touts the virtues of planning, point him in the direction of a planning-board meeting. Have him speak to the planners about why the plans are the way they are. At the very least it will make the planners nervous and—contrary to the old saying about not watching while laws or sausages are made—seeing government in action can be a powerful wake-up call. □

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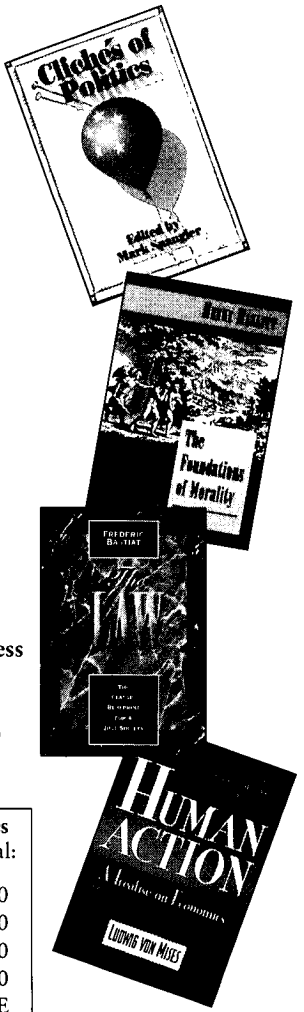

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IDEAS ON LIBERTY
JULY 2001

"A Race to the Bottom"

by Barry Loberfeld

In a letter dated December 2000 and addressed, "Dear Friend of US/LEAP," Stephen Coats, executive director of the U.S./Labor Education in the Americas Project, spoke of various purported "victories and losses in the struggle for worker justice in the global economy." Among the "losses" was what he called the "race to the bottom" in the banana industry:

> Wages, benefits, and even the existence of the Central American banana unions, generally considered the region's strongest private sector unions, are threatened by a "race to the bottom," as companies continue to increase imports from low-wage, non-union Ecuador. US/LEAP, which is working with banana unions to develop a strategic response to the industry crisis, expects this issue to be a top priority in 2001.

We can see at once what kind of portrait is being painted for us with this "race" and its evocation of dog-eat-dog competition. Here are the faceless multinational corporations, concerned only with profit, abandoning their workers in poor (but unionized) Third World countries in order to exploit the cheaper (non-union) labor in another, even poorer Third World country. The corporations, which increase their profits by pocketing the money saved on lower wages, are the undeserving "winners," while both the newly unemployed and the newly "exploited" workers are the unjustly harmed "losers" of this free-market power struggle. Isn't this a connect-the-dots case of the rich getting richer from the poor getting poorer? Could anyone seriously claim that such a situation in fact benefits everyone?

Actually, yes. Let's consider an economy—global, national, local, or even household—as if it were one company. Wouldn't it make sense to assign a particular task to the person who could perform it most efficiently: that is, who could get the job done at a lower cost to the company than anyone else? It is just this function that employers perform for the economy when they search for the "cheapest" labor, the lower cost of which allows for lower, more competitive prices and expanded production, both of which benefit *consumers*, a group that happens to include the workers themselves . . . and everyone else. As Frédéric Bastiat observed, goods that are high in supply and low in price constitute the very definition of prosperity.

But are the "low-wage, non-union" Ecuadorian laborers better off working now for some foreign corporation? Apparently they think so, or else they would have stayed with what they were doing previously. (Would *you* leave your job for one with less pay and worse conditions?) And the union workers in the other Central American countries, who are losing their jobs to the Ecuadorians—exactly what do they gain from all this? The answer: employment in those fields where they can

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better contribute to what will thus be a more productive economy. When the blacksmith "lost his job" to the automobile, he didn't go without work for the rest of his life. Instead of working in a smithy, he now worked in Mr. Ford's factory—and lived in a world where cars replaced horses. Unemployment is not eternal. No one benefits from the idleness of others.

Strikers versus "Scabs"

Although the issue of the "race to the bottom" is discussed here in the context of foreign trade, the basics apply equally to the domestic conflict between strikers and "scabs." Again, people generally gain when production shifts from less-efficient to more-efficient workers. In contrast, who benefits from the high prices and low supplies that result when government restricts the mobility of capital? But perhaps the real question is why activists, polemicists, and politicians continue to see strife and misfortune where the economist sees harmony and opportunity. The reason can be gleaned from the example at hand. Mr. Coats's understanding of the situation begins with one thought—banana union workers are losing their jobs *now*—and *ends* with it. He doesn't make the mental leap from "banana union workers" to the rest of society and from *now* to the long run. But the economist does; he knows that the focus must be, not on what happens to one part of one industry today, but on what happens to all parts of the economy tomorrow. That's why the activists, among others, will demand—on behalf of the union workers—government restrictions on the importation of bananas from Ecuador, while the economist will denounce those restrictions as harmful to everyone.

It's incredible. We would all laugh our heads off at some character who'd suggest that Uncle Sam should've crushed the emergent automobile industry in order to preserve the jobs of blacksmiths and horse breeders, and yet our federal and state governments are swamped with bills conceived to "protect" one sector of the populace from the productive activities of every other sector. Call it dog-eat-dog *legislation*, except that ultimately there's just one dog—us—and the only prey he's consuming is himself. □

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IDEAS ON LIBERTY
JULY 2001

The Steps to Economic Freedom

by Christopher Lingle

Many Latin American countries suffered for decades under a form of home-grown despotism. The accompanying repression of political liberties left a legacy of far-reaching state intervention, widespread corruption, persistently high rates of poverty, and slow economic growth.

Emerging market economies elsewhere can learn from the experience of some of these Latin American countries. Many are replacing state-led, protectionist models of development with systems that allow greater individual freedom along with open-market economies. Trends evident in both Chile and Mexico indicate that expanded economic freedom can be beneficial in promoting modern democracies that offer greater support for civil liberties.

More recently, economic liberalization in Mexico contributed to the momentum toward political liberalization and the peaceful transition from a single-party regime. Earlier, the "Chilean economic model" included an extensive and sustained commitment to free markets. Much of Chile's success occurred because workers became owners of financial capital. The worker-capitalists joined a growing middle class and benefited from increased economic openness and the wide dispersal of payoffs of this free-market model.

Indeed, Chile's experience provides evidence that expanded economic freedom can contribute to higher growth. Its rate of economic growth averaged 7 percent annually from 1984 to 1998. At the same time, there was a reduction in the proportion of people living in poverty from 45 percent in 1987 to around 22 percent in 1998. These combined results help set the stage for the introduction of liberal democracy and the rule of law.

Sustaining high growth requires deep-reaching economic reforms. At the heart of Chile's reform was the depoliticization of economic and commercial life. This included the removal of state-sanctioned privileges for monopoly producers, while minimizing special favors for cronies and supporters of the leadership.

As part of the process, Chile also underwent thoroughgoing tax reform along with radical deregulation of economic activities and strict control over monetary policy along the lines followed by New Zealand. Perhaps most important, Chile led the world as an innovator in privatizing its public pension program. The principal advantage of such privatization is that the closing of a state-run system removes a tool that is often abused for political purposes.

In 1981, Chilean workers were allowed to choose between a private scheme and the existing state-run system. At present, 94 percent of workers have chosen the private system in which workers can place their retirement savings into their own accounts, which are privately managed by competing firms. The rest have chosen to remain in the state-

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run system that has maintained the level of benefits to current retirees. All new entrants in the labor force are required to go directly into the private system. At least ten other countries have adopted some or most of the elements of Chile's pension reform.

An advantage to allowing private investment for retirement savings is that it can help restore trust in and encourage deeper development of a country's domestic financial sector. This is because private investment firms can invest in highly competitive global index funds. Allowing pension funds to flow abroad freely provides foreign and domestic investors with greater confidence to undertake risk. As the domestic financial sector becomes liberalized, it can be integrated into the international system, allowing all citizens to have access to the savings of the rest of the world.

Overhauling Tax Policy

A radical overhaul of tax policy is an important step in weakening the political grip over the economy. For example, payroll taxes could be cut or eliminated. Lower tax rates that are applied in a nondiscriminatory manner will encourage job creation, investment, and a more transparent business sector because firms will have less incentive to avoid taxes. In those circumstances, lending operations of foreign and domestic banks can expand owing to improved assessment of the financial conditions of potential borrowers. In turn, this will encourage capital formation that would increase the growth potential of the economy.

There should be a removal of government-sanctioned monopolies that receive various forms of protection. Subsidies should also be eliminated since they obscure transparency in accounting practices and involve high social costs arising from sustaining inefficient business enterprises. Such policies interfere with the ability of financial systems to guide savings to productive investments that encourage growth. Because public-sector firms are seldom allowed to become bankrupt, they hold resources captive that should be released to a more efficient use.

Privatization can bring an end to government monopolies, but they should not be replaced by private-sector monopolies. Widespread deregulation should accompany privatization so that free entry by domestic and foreign firms into all segments of the economy can create competitive conditions for better engagement with the global economy. At the same time, this competition would encourage changes in accounting standards and legal practices to meet international standards. It is also likely that greater exposure to contract negotiations may alter cultural attitudes about market activities that require an increased sense of trust in strangers.

Finally, a more stable currency would increase security and growth while providing a greater resilience against external shocks to the economy. Those countries plagued by inflation (or deflation) should undergo fundamental monetary reform. Since this may take a long time, an alternative is to replace the domestic currency with one that already has a reliable reputation, such as the dollar or the euro. This would allow a reduction in interest rates and provide security to foreign and domestic investors. By enhancing the ability to make financial plans for the future, long-term credit markets would be able to emerge.

Such radical reforms can be more readily resisted when countries face crisis and hardship. The most vigorous opposition can be expected from those who will lose their privileges. However, support for reform will be stronger if government-sanctioned privileges are eliminated equally for all groups.

Citizens and public officials must realize that expanding individual freedom is the best step toward sustainable development. In the end, whether a country enjoys prosperity or suffers from poverty is a matter of political choice. □

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Economics

Reducing the Cost of Reducing Pollution

As we discussed last month, the efficient amount of pollution is not likely to please many. The problem is that everyone in an area has to consume the same amount of environmental quality while the value of that quality and the price paid for it vary from person to person. Some will want less than the efficient amount of pollution; some will want more; and almost no one will want the same amount.

The efficient amount is what everyone would want if there were no cost to negotiating and each individual faced payments that honestly reflected the value he receives from pollution reduction. Unfortunately, reaching agreement on and enforcing such a payment scheme is impossible when many people are involved. The result is that we cannot determine the efficient amount of pollution or reach agreement on the desirability of any amount of pollution.

But a pollution policy requires a decision on how much pollution to reduce. And even if we cannot all agree on the desirable pollution level, we should all be able to agree on one thing: No matter what pollution level is decided on, we want to achieve it at least cost—at least sacrifice of other things we value. Equivalently, we can all agree that no matter how much cost we incur, we want to reduce as much pollution as possible.

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What does it take to reduce pollution at least cost? More than it may seem. Clearly, it requires that every polluter reduce pollution as cheaply as possible. There are many ways to reduce pollution, and doing so in the least expensive way requires a lot of local information—information available only to those familiar with local conditions and circumstances—that is difficult, if not impossible, to communicate to others.

For example, there are many ways to reduce the emission of sulfur dioxides from an electric generating plant—substitute low-sulfur western coal for high-sulfur eastern coal, substitute natural gas for coal or petroleum, install a stack scrubber to filter out some of the sulfur dioxide, substitute more costly but nonpolluting pump-storage generation (see my March column) to serve peak-load demands, or shut down the plant. The costs associated with each of these actions vary among generating plants. A plant in Kansas may find it less costly to switch to western coal, while a plant in New Jersey is more likely to find it cheaper to install a stack scrubber. The cheapest way to reduce emissions by a small inefficient generating plant that is barely covering its costs may be to shut it down, something that would be very costly for a large efficient plant that is producing electricity worth far more than it costs to generate. Or the least-cost action may be some combination of approaches, such as relying more on pump-storage generation for peak-load demand and substituting natural gas for coal. The possibilities are endless for every type of

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polluting activity, and the only hope for choosing the least-cost reduction in demand requires the use of information known only to those closely involved with each situation.

But even if every polluting firm were reducing its pollution at least cost, pollution would not necessarily be reduced at least cost. Having everyone reduce pollution as cheaply as possible is clearly necessary for least-cost pollution control, but it is not sufficient. We also need the right pattern of pollution reduction over all polluters. Some polluters can reduce pollution at a lower cost than others. Clearly, those who can reduce pollution at low cost have to reduce by more than those who can reduce only at high cost if we are to achieve the least-cost pattern of reduction. But to determine exactly what this least-cost pattern is, we have to consider the marginal costs of pollution reduction.

Equating at the Margin

It does not tell us much to say that one firm can reduce pollution at low cost and another at high cost. If this were true at all levels of reduction, then the first firm should reduce its pollution all the way to zero before the second begins any reduction at all. But as a firm reduces more of its pollution, the marginal cost of reduction will begin to increase (it makes sense to start with the pollution easiest to reduce and then move to that which is progressively more costly), and long before the low-cost firm has reduced its pollution to zero, its marginal cost of reduction will exceed the high-cost firm's marginal cost of its first unit of reduction. Clearly, reducing another unit of pollution at minimum cost requires that it be reduced by the firm with the lowest marginal cost. But this *increases* that firm's marginal cost, and soon additional reduction is more cheaply done by another firm. No matter what the level of pollution reduction, it is not occurring at least cost unless the marginal cost of reduction is the same for all firms.

For example, if the marginal cost of reducing pollution is $50 in one firm and $25 in another, then the first firm could increase pollution by one unit (saving $50) while the second firm reduces pollution by another unit (costing $25). This would result in the same amount of reduction at a saving of $25. This increase in pollution by the first firm and offsetting reduction by the second continues to reduce the cost of a given amount of pollution until the marginal cost of reduction is the same for both.

It obviously requires a lot of information to reduce pollution at least cost, and this information is widely dispersed. Each polluter knows more than anyone else about how to reduce his pollution as cheaply as possible. Even if this information could be communicated to a central authority, it would soon be rendered obsolete by changing circumstances. There is simply no way remote government authorities can acquire the knowledge necessary to dictate to firms how each should reduce pollution and how much each should reduce to protect the environment efficiently and effectively. Furthermore, even if policymakers had all the information necessary for reducing pollution at least cost, they would have little motivation to use it appropriately.

But the current centralized command-and-control approach assumes government can do those things. I'll discuss this approach in my next column, emphasizing why it often does more to protect special interests than to protect the environment. □

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IDEAS ON LIBERTY
JULY 2001

James J. Hill: Transforming the American Northwest

by Daniel T. Oliver

In 1962 Ayn Rand gave a lecture titled "America's Persecuted Minority: Big Business" in which she identified two types of businessmen.[1] Burton Folsom, Jr., later called these "economic and political businessmen," the first, self-made men who earned their wealth through hard work and free trade, and the second, men with political connections who made their fortunes through special privileges from government.

James Jerome Hill, builder of the Great Northern railroad, was the only railroad entrepreneur of the nineteenth century who received no federal subsidies to build his railroads. All other builders, such as Cornelius Vanderbilt, received aid. Perhaps more than any other American, Hill helped to transform the American northwest by opening it to widespread settlement, farming, and commercial development. In the process, he became one of the wealthiest men of the Gilded Age, amassing a fortune estimated at $63 million.[2]

Some critics have charged that Hill did indeed receive federal subsidies to construct the Great Northern.[3] But this charge confuses federal subsidies with land grants. Unlike a taxpayer subsidy, a land grant is the ceding of unimproved government land to a private developer. Critics wrongly assume that government has the power to acquire land by non-Lockean means—that is, by simply claiming to own it without "mixing one's labor with the land."

Early Career

Hill was born in the small town of Rockwood in southern Ontario, on September 16, 1838. Because his father died when Hill was young, he had to temporarily forgo formal education to help with family finances. Showing academic ability, however, he received free tuition at Rockwood Academy. Hill later lost an eye to an accidental arrow shot, preventing him from pursuing the career in medicine that his parents had hoped for.

At 18 Hill became interested in the Far East and decided on a career in trade. He headed west in hopes of joining a team of trappers, arriving by steamboat in St. Paul, a major fur-trading center, on July 21, 1856. However, Hill missed the last brigade of the year and had to stay in the city. Nonetheless, he grew to like St. Paul and decided to remain there.

Hill's first job was as a forwarding agent for the Mississippi River Steamboat Company. He set freight and passenger rates and learned about steamboat operations. Unable to fight in the War Between the States because of his eye, Hill organized the First Minnesota Volunteers. He also worked as a warehouseman, pressing and selling hay for the troops' horses. It was here that he learned how to buy and sell goods at a profit and use the least expensive method to ship goods.

After the war, Hill became an agent for the

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First Division of the St. Paul & Pacific Railroad. At the time the line used wood for fuel. Hill believed rightly that coal would be cheaper, so he made a contract with the company to supply it. He also formed a business with Chauncey W. Griggs, a Connecticut man in the wholesale grocery business. Together they created Hill, Griggs & Company, a fuel, freighting, merchandising, and warehouse company.

First Railroad

Hill later became interested in the Red River of the North that flows north to Lake Winnipeg. Since Fort Garry (now Winnipeg) was an important Hudson's Bay Company trading post, Hill began transporting personal belongings there. Later, Hudson's Bay employee Norman Kittson left the company to join Hill in forming the Red River Transportation Company.

In 1870 Hill traveled up the Red River to investigate a French and Indian mob that had captured Fort Garry. During that trip and others, Hill saw the rich soil of the region while observing the St. Paul & Pacific's steady decline. He became convinced that he could make the line profitable by extending it to Fort Garry. When the panic of 1873 put the railroad under receivership, he saw his chance to buy it and other lines in crisis.

Hill and Kittson went to Donald Smith of the Hudson's Bay Company and told him their plan. Smith offered money and approached George Stephen, president of the Bank of Montreal. Together, the four of them bought the St. Paul & Pacific for $280,000 ($3.9 million current), which Hill estimated as only 20 percent of its real value.

Hill purchased rails, rolling stock, and locomotives, and hired laborers who laid more than a mile of track a day. In 1879 the tracks were connected at St. Vincent, Minnesota, to a Canadian Pacific branch from Fort Garry. Since the Canadian Pacific's transcontinental route was not yet completed, all traffic through Fort Garry had to use Hill's route. He received two million acres of land through the Minnesota Land Grant for completing the rail line on time. He also renamed his railroad the St. Paul, Minneapolis, & Manitoba. His timing was perfect since the area experienced two exceptional harvests that brought extra business. In addition, a major increase of immigrants from Norway and Sweden allowed Hill to sell homesteads from the land grant for $2.50 to $5 an acre.

Expanding the Line

During his planning of the St. Paul, Minneapolis, & Manitoba, Hill was also involved in the construction of the Canadian Pacific Railway. While Donald Smith and George Stephen were leaders behind this transcontinental route, Hill gave advice about selecting routes and construction techniques. But because the Canadian Pacific would soon be in competition with his own planned transcontinental route, Hill resigned from the business and sold all his stock in 1882.

Only a year after his purchase of the St. Paul & Pacific, Hill decided to extend his railroad to the Pacific. Many thought that he could never do it. Never before had someone tried to build a railroad without government land and grants. Railroads like the Union Pacific, Central Pacific, and Northern Pacific were all given millions of acres of government land to build their transcontinental routes. People thought that even if Hill could achieve his dream, he wouldn't be able to compete with government-funded lines. His quest came to be known as "Hill's Folly."

The St. Paul, Minneapolis, & Manitoba reached Minot, North Dakota, in 1886. Because the Northern Pacific had steep grades and high interest charges, and was saddled by high property taxes, the new railroad resulted in a much more profitable route.

A railroad line would obviously help the economy of any town it passed, so Hill was able to get good rights of way. However, one town, Fort Benton, Montana, rejected Hill's request for a right of way. He decided to cut it off by building around it. Showing his attitude toward those who tried to stand in his way, Hill left Fort Benton one mile from the railroad.

After very quick construction using 8,000 men and 3,300 teams of horses, the St. Paul,

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Minneapolis, & Manitoba reached Great Falls in October 1887. Hill connected it there with the Montana Central Railroad, which went on to Helena, bringing lots of new business. In 1890 he consolidated his railroad into the Great Northern Railroad Company.

Hill also encouraged settlement along the lines by letting immigrants travel halfway across the country for $10. In addition, he rented cheap freight cars to entire families. These strategies, rarely used by other railroads, encouraged even more business.

In 1893, the St. Paul, Minneapolis, & Manitoba reached Puget Sound at Everett, Washington. However, during the same year, a panic put the Northern Pacific as well as the Santa Fe and Union Pacific into receivership. Hill made an agreement with businessman Edward Tuck and Bank of Montreal associate Lord Mount Stephen to buy the Northern Pacific. A stockholder objected, however, arguing the deal would violate Minnesota law, and the agreement was stopped. But Hill got around this by having his associates help buy Northern Pacific stock as individuals instead of as a company. The Northern Pacific became part of the Great Northern in 1896. The lines came to be widely known as the "Hill Lines."

Buying Another Line

Hill realized that the only eastbound traffic for the first few years would be lumber, and this would make the line less profitable than it might be. Wishing to acquire a line to Chicago and St. Louis, where he could deliver the lumber, Hill researched the Chicago, Burlington & Quincy railroad that stretched from the Great Lakes to the Rocky Mountains. This acquisition would also give him a line that could haul cotton to St. Louis and Kansas City and connect to the smelters of Denver and the Black Hills. The trains would be kept full at all times. Working with J.P. Morgan, Hill succeeded in purchasing the Chicago, Burlington & Quincy.

Hill now began to expand his shipping empire internationally via Seattle. He supplied Japan with cotton from the south and shipped New England cotton goods to China. He also shipped northern goods such as Minnesota flour and Colorado metals to Asia.

Hill continued to expand his railroads in the early twentieth century. He bought the Spokane, Portland, & Seattle Railway and added a 165-mile line from Columbia along the Deschutes River to the town of Bend. He also purchased several electric rail lines to compete with the Southern Pacific, and an ocean terminal at the mouth of the Columbia River near Astoria. He had two large steamships that operated between the terminal and San Francisco. This proved to be good competition for the Southern Pacific.

Conservation

Hill had many other business interests, including coal and iron-ore mining, shipping on the Great Lakes, finance, and milling. A major related interest was farmland conservation. Hill was widely known in his day as a leader in this area. Unlike most environmentalists today, Hill believed that natural resources should be privately owned and locally controlled, although in some cases he believed state-level ownership was justifiable. He considered the federal government too distant to competently manage resources. Indeed, he once criticized the U.S. Forest Service, saying "the worst scandals of state land misappropriation . . . are insignificant when compared with [its] record."[4]

His interest in conservation stemmed both from his concern for the nation's food supply, a popular philanthropic cause at the time, and from business concerns. Since his railroads largely transported agricultural products, Hill paid close attention to fluctuations in the grain markets. Falling grain yields in the Great Plains would mean fewer goods to transport.

Believing that better farming methods would both increase yields and conserve soil quality, Hill used his own resources for agricultural research and the dissemination of findings to farmers. He even had his own greenhouse that served as a laboratory. He hired agronomy professor Frederick Crane to do soil analyses in Minnesota, Montana, and North and South Dakota. Farmers were paid to cultivate experimental plots on their land

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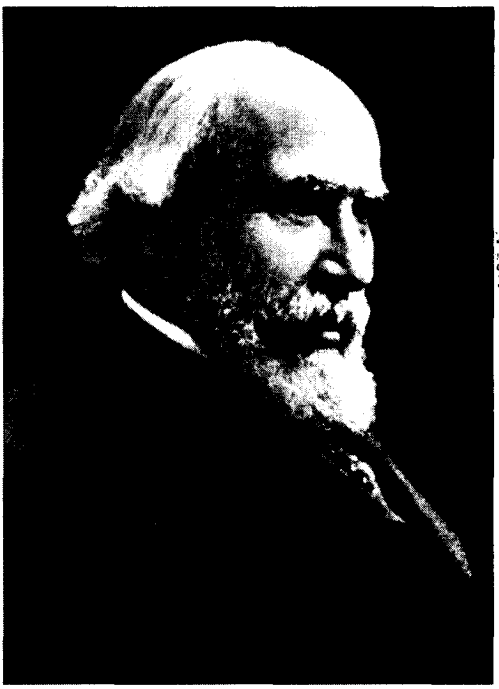
according to Crane's instructions. These were a tremendous success, yielding 60 to 90 percent more than the conventional acreage of the time.

In a speech, Hill once said, "Out of the conservation movement in its practical application to our common life may come wealth greater than could be won by the overthrow of kingdoms and the annexation of provinces; national prestige and individual well-being; the gift of broader mental horizons, and best and most necessary of all, the quality of a national citizenship which has learned to rule its own spirit and to rise by the control of its desires."[5]

In 1908 President Theodore Roosevelt invited Hill to a governors conference on conservation and appointed him to a lands commission. Hill was never very pleased with the position, preferring action to talking, but he did make his views known.

Hill was also a major philanthropist. He supported the Roman Catholic seminary in St. Paul and endowed the Hill Reference Library, which operates to this day.



PHOTOGRAPH BY PACH BROTHERS

James J. Hill (1838–1916)

Views on Government

Hill was a great champion of free markets. He was particularly critical of tariffs, calling them "a great enemy of conservation" and pointing out that by prohibiting imports of such products as timber from other countries, the United States was accelerating the depletion of its own. Regarding the federal government's ability to conserve resources, he once said, "The machine is too big and too distant, its operation is slow, cumbrous and costly."[6]

A 1910 speech to the National Conservation Congress in St. Paul summarizes Hill's views on government. He remarked:

> Shall we abandon everything to centralized authority, going the way of every lost and ruined government in the history of the world, or meet our personal duty by personal labor through the organs of local self-government, not yet wholly atrophied by disuse. . . ? Shall we permit the continued increase of public expenditure and public debt until capital and credit have suffered in the same conflict that overthrew prosperous and happy nations in the past, or insist upon a return to honest and practical economy?

Summing up, Hill once said, "The wealth of the country, its capital, its credit, must be saved from the predatory poor as well as the predatory rich, but above all from the predatory politician."[7]

A Classic Entrepreneur

In 1907, at the age of 69, Hill turned over leadership of the Great Northern to his son, Louis W. Hill. But he remained active in running his railroads and went to his office in St. Paul every day.

In May 1916, Hill became ill with an infection that quickly spread. He went into a coma and died on May 29 at the age of 77. At 2 p.m. on May 31, the time of his funeral, every train and steamship of the Great Northern came to a stop for five minutes to honor him.

Hill exhibited the classic traits of a successful entrepreneur. He diligently studied all aspects of his businesses, such as which was

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best for carrying track about to be laid: caboose, handcar, horse, locomotive, or passenger coach. He did all the analyses of grades and curves himself and often argued with his engineers and track foremen, demanding changes that he felt necessary. He insisted on building strong bridges made with thick granite and using the biggest locomotives and the best quality steel.

At the end of his life a reporter asked Hill to explain the reason for his success. He replied simply that it was due to hard work. That hard work earned him the title "the Empire Builder," and at the 1915 Panama-Pacific Exposition in San Francisco he was named Minnesota's "greatest living citizen."

Hill was remarkable because he developed an area that most people thought never could be developed. His railroads made Minnesota and the Dakotas major destinations for huge waves of immigrants. In fact, Hill sent employees to Europe to show slides of western farming in efforts to urge Scotsmen, Englishmen, Norwegians, and Swedes to settle in the Pacific northwest. As a result, more than six million acres of Montana were settled in two years. And because of Hill, the small town of Seattle, Washington, became a major international shipping port.

James Jerome Hill has rightly earned a place as one of the greatest entrepreneurs in American history. □

1. Ayn Rand, "America's Persecuted Minority: Big Business," in *Capitalism: The Unknown Ideal* (New York: Signet, 1967), pp. 44–62.
2. A good source of information on Hill is Albro Martin, *James J. Hill and the Opening of the Northwest* (St. Paul: Minnesota Historical Society, 1991).
3. See, for example, Michael P. Malone, *Empire Builder of the Northwest*, The Oklahoma Western Biographies, vol. 12 (Norman, Okla.: University of Oklahoma Press, March 1997).
4. James J. Hill, "Railroad Magnate and Conservationist," www.csua.net/~cda/hill.html.
5. Ibid.
6. Ibid.
7. Ibid.

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IDEAS ON LIBERTY
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Deposit Insurance versus Branch Banking: The S&L Debacle

by Larry Schweikart

Those of us old enough to have parents or grandparents who lived through the Great Depression have probably heard the remark that "Franklin Roosevelt saved the banking system with deposit insurance." The purported value of federal deposit insurance for keeping banks solvent is assumed, and virtually no one seeks to question it anymore. While challenges to Glass-Steagall, the law that separated commercial and investment banking, surfaced fairly routinely in Washington (it has been slightly modified in the last 20 years), there has been nary a peep about ending deposit insurance.

This is all the more striking because of deposit insurance's role in the savings and loan (S&L) debacle of the late 1970s and early 1980s. Support for deposit insurance is even more misguided now that we have some actual data on which to judge it. The bottom line? Government-mandated deposit insurance is at best useless and at worst dangerous. At the very least it contributed to the banking collapse of the 1920s that weakened the financial structure which toppled in 1932.

A number of scholars began to examine the role of deposit insurance after the S&Ls collapsed, finding that while the "interest rate mismatch" (paying market price for deposits via interest, but receiving much less from fixed, lower-rate mortgage payments) was the primary culprit, weak S&Ls were pushed over the edge by the incentives created by deposit insurance.

In a nutshell, managers and owners of S&Ls, knowing that their friends, neighbors, and customers were "protected" and "insured" by the U.S. government, engaged in riskier behavior than they normally would have if those people's savings had indeed been at risk. Any gambler playing with house money has no problem raising the bet.

But bank deposit insurance did not originate in the 1970s or even in the New Deal. It has a longer history. The first insurance efforts came out of the private sector in the form of clearinghouse associations, in which members created markets in one another's liabilities and used a variety of devices to keep "free riders" out. The purpose of these organizations, though, was not insurance per se, but a form of information-sharing that would preclude the need for insurance.

Nevertheless, various early insurance schemes appeared. One example is the New York Safety Fund (1829), which by the 1830s had transformed from a predominantly private-sector organization to a state-run apparatus. When the insurance systems were privately held, run, and funded, they had a good shot of surviving. But the state-directed insurance funds all flopped.

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After nationwide "reforms" placed authority over the state banking systems in the hands of either state bank examiners, commissioners, or banking boards, there was no longer a question of whether the state would regulate banks. However, the principles by which a state would regulate the banks still mattered greatly, especially as the extremely prosperous period for agriculture (1914–1920) fed higher growth rates for rural banks. To preclude failures, states in these agricultural areas instituted a second wave of state insurance funds after 1907.[1]

At the same time, several agricultural states did not have insured banks. To assess credit or blame for failures, however, it is necessary to understand that whether banks were insured or not, branch banking might exist, permitting private banks to open extension offices to make loans and collect deposits. Or branch banking might be prohibited by state law, permitting only unit banks; to put an office in a new location, a bank would have to obtain a separate state charter as though it were a new institution. Even if the same owner held a majority interest in many unit banks, the assets could not be mixed, nor could the liabilities be diversified through shared risk. In short, when permitted, the banking systems developed their own "insurance" funds through branching, and, as a backup, clearinghouse associations.

Agricultural Collapse

The agricultural collapse in the United States began in the 1920s, as former allies and enemies all put down their weapons of war and went back to the fields. With prices falling, the farm sector entered a death spiral, taking agricultural banks with it. Disastrous as it was, it nevertheless provided a carefully controlled experiment in the efficacy of deposit insurance. In a series of studies that debunks the long-touted benefits of deposit insurance, Columbia University economist Charles Calomiris has analyzed the capital and assets of insured and uninsured banks, and of branch and unit banks. The results establish without question that the more regulation the state imposes, the worse things get, and that markets, and structures that freely evolve from the market, provide the best defense for depositors.

Comparing the insured and uninsured states, and superimposing the data of branch bank and unit bank states, Calomiris found that "from 1921 to 1929 only 37 branching banks failed in the United States," which constituted only a 4 percent failure rate of all branch bank facilities. On the other hand, Calomiris found that those states that had compulsory deposit insurance, especially those that had established their system early and thus provided a long gestation period for abuse, fared the worst, losing between one and five times the equity of an average state bank.[2]

These studies make clear that in the 1920s the best alternative for protecting bank deposits was branch banking in a state with no insurance, followed by branch banking in a state with voluntary insurance. The worst scenario was to have unit banking in a state where deposit insurance was compulsory, that is, where the government regulators wielded the most power and allowed the smallest window of banking options.

The overall structure of banking within states was weakened owing to the critical role of perceptions of and information about bank stability.[3] All banks became suspect when some banks failed, and no matter the reputation that large banks had built up over the years, public panics and "manias" can often outrun the flow of accurate information. It was precisely this understanding of banking that led virtually all of the state legislatures in the antebellum period to ignore laws that required that any bank that "suspended" during a run (refused to pay out gold or silver for its paper money) should be closed. Quite the contrary, the fact that almost all banks in a given state, then usually across the country, would "suspend" simultaneously indicated that information was getting out and that the banks were acting in concert to prevent runs from even starting.

The best form of market protection (and, if governments insist on regulating, of regulation) is the kind that enhances the transmission of information. Deposit insurance inter-

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feres with this by concealing the weaknesses of a bank—by postponing runs that would otherwise occur without it. A better policy, one that involves more freedom, has been under our noses for more than 150 years—branch banking. But resistance from the unit-bank lobby prevented an interstate branch-banking law from becoming a reality in 1928 (when most observers were sure it would pass). Continued unit-bank resistance nipped interstate branch-banking in the bud in the late 1980s, when again many proponents thought it would pass.

S&L Collapse

In the meantime, the S&L crisis struck. In light of that crisis, we should be clear on this: branch banking is not perfect; it couldn't save the banking system in states such as South Carolina in the 1920s. Information transmission is an excellent means to prevent runs only if some diversification is possible. In cotton-oriented South Carolina in the mid-1920s, there were few alternative investments. A similar case existed with the famous chain-bank system (not a branch system, but the next closest variant) in the late 1920s. It also failed, because the members of the chain were overwhelmingly concentrated in sheep, and mining was about the only other potential investment.

As has been discussed often, the S&L crisis—like the California power crisis today—was initially blamed incorrectly on "deregulation." It would have been correct to say "partial deregulation," which often is as bad as none at all. In the case of the S&Ls, they had already operated with certain advantages over banks since the New Deal; they were allowed to offer one-half a percent more for deposits. But they also were limited by law in what they could lend on: consumer and business loans were prohibited, but mortgage loans were encouraged. Mortgages of the 1960s typically had a life of 15–20 years. But in the period of rapid inflation after 1969, almost all S&Ls found themselves paying 6–10 percent for deposits, but collecting only 5–7 percent on 15-year mortgage loans. Obviously, that could not continue for long.

Congress decided to make the S&Ls more like banks by removing "Regulation Q," which limited the interest rates banks and S&Ls could pay. Both banks and S&Ls opposed this for obvious reasons: costs for deposits would rise. But the S&Ls had a more substantial argument against partial deregulation: if Congress did not make them entirely like banks, they would "pay out short, but take in long." Congress allowed the S&Ls to pay competitive rates for deposits to attract more money, and it loosened some of the lending restrictions. But they remained overwhelmingly frozen into the long-term mortgages, and that "interest-rate mismatch" could not be overcome quickly enough. By the time the slow-liquidating mortgage loans could be recovered and new higher interest-rate loans made, the S&Ls' cash would be gone. The only solution was to invest in assets that brought higher returns—mostly land, but also, to a smaller degree, junk bonds.

At that point, deposit insurance again played a critical role. An honest, effective S&L owner or manager could see that only the riskiest investments would ever "beat the clock" and offset the slow-recovering mortgages. But the key word was "risky." The owners and managers knew that they could just as easily lose their institutions' assets as recoup enough money to place them on a paying basis again. And most owners, despite the characterization of them in the media, were not snakes. They knew and lived with their customers. Under other circumstances, they would have filed for bankruptcy protection and done their best to pay each depositor a percentage of the proceeds. But the "magic pill" of deposit insurance made all that bankruptcy talk unnecessary. If the S&L gambled big and won, the depositors were safe. If it sank the depositors' money in a dry hole—the depositors were still safe! As the comedian Yakov Smirnoff once said, "Is this a great country or what?"

The presence of deposit insurance unquestionably encouraged S&L owners and managers to take extreme risks in hopes of righting their financial ships. I suspect that deposit insurance did more to push otherwise ethical and well-meaning owners and managers into

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risky ventures than it did the out-and-out crooks, who cared little if depositors got hurt anyway.

All of this comes full circle to branching. By the 1970s many S&Ls in fact were intrastate branch operations. The largest S&L in Arizona, for example (where I kept my paltry savings), was Western Savings, which had dozens of branches. Again, however, the branch is only a means of transmitting information, and it will transmit bad information as well as good. When land values went south in the late 1970s and early 1980s, Western Savings, along with hundreds of Texas, Oklahoma, California, and Florida S&Ls heavily vested in land, went belly up. Ironically, as has historically been the case, land values do eventually return: the land held by the U.S. government eventually paid off nearly 100 cents on the dollar. But the S&Ls did not have the benefit of time.

Moreover, while *intrastate* branch banking is good, *interstate* branch banking is better. The S&Ls could not legally set up branches in different parts of the country to permit wide diversification. That and the presence of deposit insurance sealed their fate.

In nearly 100 years of active bank regulation, at both the state and national level, one reasonable policy—interstate branching—has been ignored in order to implement a poor policy—deposit insurance. The reader can draw his own conclusions as to why governments favor deposit insurance, but no one can make the argument that it is the best policy to keep banks sound and depositors' money safe. □

1. These eight states were, in order of appearance of the statutes, Oklahoma, Texas, Kansas, Nebraska, South Dakota, North Dakota, Washington, and Mississippi. See Charles Calomiris, "Is Deposit Insurance Necessary? A Historical Perspective," *Journal of Economic History*, June 1990, pp. 283–95, and his "Deposit Insurance: Lessons from the Record," *Economic Perspectives*, May/June 1989, pp. 10–30.

2. Calomiris.

3. Banks in the "Wild West" were remarkably solvent and resistant to holdups due in part to these "information assets." See my "The Non-Existent Frontier Bank Robbery," *Ideas on Liberty*, February 2001.

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IDEAS ON LIBERTY
JULY 2001

Where Are the Best Schools in Austrian Economics?

"We must raise and train an army of fighters for freedom."
—F. A. HAYEK

Frequently students or parents approach me at investment or economics conferences with the question, "Can you recommend an undergraduate or graduate program in free-market economics?" With the explosive interest in a degree in economics, it's imperative that students get a topnotch education.* In my experience, if students aren't exposed early to the principles of Adam Smith and Ludwig von Mises, it is often difficult for them to shed the philosophies of John Maynard Keynes, Karl Marx, and other interventionists later on.

Here in the United States most colleges and universities have a goodly number of "neoclassical" economists with a free-market bent. (There are a number of "free market" colleges and universities in Latin America, Europe, and Asia, a topic I shall pursue in a future column.) The American schools include the University of Virginia; the University of California, Los Angeles (UCLA); Florida State University; and the University of Chicago. However, anyone pursuing a degree in economics from these institutions will need to be well versed in advanced mathematics in order to understand the professional language. As New York University Professor Mario Rizzo wrote me, "Contemporary economics has become a branch of applied mathematics."

Graduate Schools in Austrian Economics

Fortunately, there's a growing number of schools that specialize in Austrian economics. The best-known program is located at New York University, ranked as one of the top 20 economics departments in the country. The Austrian Economics Program, under the tutelage of Israel Kirzner, David Harper, and Rizzo, has been functioning at NYU since the days of Mises. The Austrian course work attracts students from around the world.

NYU also offers a weekly Austrian Economics Colloquium and an annual summer course held at FEE. (Go to www.econ.nyu.edu/dept/austrian.) However, it should be noted that the NYU program is small, and most of the teachers there are non-Austrian.

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*See Jon E. Hilsenrath, "In Hot Pursuit of Economics Ph.D.s—Short Supply and Big Demand Mean Young Graduates Are Courted Like Royalty," *Wall Street Journal*, February 20, 2001, p. B1.

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George Mason University (in northern Virginia) is also attracting undergraduate and graduate students who want to specialize in Austrian economics, although Professor Peter Boettke, who also edits *The Review of Austrian Economics*, says that "what makes GMU particularly attractive are its affiliated fields of Public Choice, history of thought, and constitutional economics." Boettke and Karen Vaughn teach the Austrian theory of the market process; Richard Wagner offers a course in institutional economics; and Walter Williams serves as chairman of the department. (Go to www.gmu.edu/departments/economics.) The Institute for Humane Studies is also located at GMU (www.theihs.org).

Another graduate Austrian program that is gaining prominence is at Walsh College of Accountancy and Business Administration in Troy, Michigan (near Detroit). Walsh College (www.walshcol.edu) specializes in business degrees—in marketing, management, finance, and economics. Under the direction of Harry Veryser, the school now offers a two-year bachelor's degree and a master's degree in economics. The entire faculty consists of free-market economists, with a special emphasis on Austrian economics. Students are assigned books and readings by Mises, Hayek, Henry Hazlitt, Wilhelm Röpke, Paul Heyne, and me, among others. Walsh's program is impressive.

The Expanding Austrian Universe

With the Ludwig von Mises Institute (www.mises.org) next door, Auburn University (www.auburn.edu/business/economics) has attracted a large number of students over the years. The most prominent Austrian economist on campus is Roger Garrison, author of the new advanced macro text *Time and Money*. Garrison teaches the main course in macroeconomics. (Leland Yeager, former Ludwig von Mises Professor of Economics at Auburn, is now retired.) Unfortunately, Auburn recently discontinued its Ph.D. program.

There are a goodly number of colleges offering solid undergraduate courses. Two mainstays are Hillsdale College in Michigan and Grove City College, near Pittsburgh. Grove City College (www.gcc.edu) no longer has Hans Sennholz as chairman of the department, but Hans indicates that the school is still free-market oriented, and John Moore, the president, is an economist. Hillsdale College (www.hillsdale.edu/dept/economics) has several free-market professors, the most well-known being Richard Ebeling, who runs the annual Ludwig von Mises lecture series. Hillsdale also houses the Mises library.

I should also mention Northwood University, an associate- or full-degree business school with campuses in Midland, Michigan; West Palm Beach, Florida; and Cedar Hill, Texas. Founded by Gary Stauffer and Arthur Turner in 1958, Northwood stresses free-market and Austrian economics. (Go to www.northwood.edu.)

In California, there are two universities with an Austrian bent. Santa Clara University, under the guidance of Daniel Klein, offers the Civil Society Institute (www.scu.edu/csi), which involves a weekly colloquium, lectures series, and "coffeehouse" for libertarian ideas. Other prominent members of the faculty are Laurence Iannaccone, Henry Demmert, Fred Foldvary, and David Friedman. Charles Baird, labor economist and *Ideas on Liberty* columnist, is the co-chairman of the department at California State University at Hayward (www.sbe.csuhayward.edu) and director of the Smith Center for Private Enterprise Studies. According to Baird, half the tenure-track economists there are "unabashedly free-market."

Lawrence H. White, a specialist in free banking, was recently appointed the first F. A. Hayek Professor of Economic History at University of Missouri-St. Louis (www.umsl.edu/divisions/artscience/economics). According to his colleague David C. Rose, "a number of economists are either outright Austrian or are very sympathetic to the Austrian school and free market ideals."

If you want year-round sunshine, you can always come to central Florida and take one of my courses in investments, history of thought, or Austrian economics at Rollins College in Winter Park, Florida (near Orlando). (See www.rollins.edu/.)

Austriae est imperare orbi universo! □

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BOOKS

Karl Marx: A Life

by Francis Wheen

W.W. Norton • 2000 • 431 pages • $27.95

Reviewed by Antony Flew

This book is described by the author as "an attempt to rediscover Karl Marx the man . . . a Prussian immigrant who became a middle class English gentleman; an angry agitator who spent most of his adult life in . . . the British Museum Reading Room; a gregarious and convivial host who fell out with almost all his friends; a devoted family man who impregnated his housemaid; and a deeply earnest philosopher who loved drink, cigars and jokes."

In that attempt Francis Wheen has been remarkably successful. As a treatment of "Karl Marx the Man," as opposed to Karl Marx the revolutionary thinker, Wheen's book certainly deserved to become—as immediately on its first publication in the United Kingdom it did—a bestseller.

It is, however, unfortunate that Wheen is so very conscious of being the first person to produce a biography of Marx since the end of the Cold War. His superciliousness on this account leads him contemptuously to dismiss the classic work of Leopold Schwartzchild. For Schwartzchild had written in his splenetic biography, *Karl Marx: The Red Prussian,* that "it will hardly be disputed that it is he [Marx] who is manifested in the very existence of Soviet Russia and particularly in Soviet methods."

Schwartzchild's contention was, of course, about the actual consequences of implementing Marxist policies. It cannot therefore be refuted, as Wheen believes he does refute it, by speculating about what the reactions of Marx would have been had he lived to see those consequences. In fact, as Schwartzchild proceeded to show, Marx was again and again confronted with the charge that socialism, or at any rate socialism as he understood it, must involve slavery and despotism.

Since from his studies of what he called "the Asiatic mode of production" and what others know as oriental despotism, Marx must have realized that such charges have substantial force, and since no one could maintain that Marx was temperamentally disinclined to controversy, we have to conclude that the reason he never published any attempt to refute them was that he did not himself care whether or not they were true.

Wheen never discusses this, although he does quote, albeit incorrectly, the claim that Friedrich Engels made in his obituary address at the funeral of Marx: "Just as Darwin discovered the law of development of organic nature, so Marx discovered the law of development of human history." Although such claims have frequently been made by Marxists, above all by Lenin, the contention that the standing of Marx as a scientist is in any way comparable with that of Darwin is outrageous. The two do not even begin to be comparable either in their attitudes to inquiry or in their achievements of discovery.

In the first place, no one has ever found in all the works of Marx and Engels recognition of any difficulty for what in their correspondence they called "our view"—any difficulty of which they therefore hoped eventually to dispose. Thus when it appeared that the existence and persistence of oriental despotisms falsified the claims in *The Communist Manifesto* about the universality of class struggles, Marx failed to admit that that claim had either to be qualified or abandoned. Instead he simply lost interest in oriental despotisms, paying no further attention to the problems which they presented.

Again, although Wheen wants to make out that Marx's notorious immiseration thesis applied only to a subproletarian underclass, the fundamental aim of the first and only volume of *Das Kapital* to be published in the lifetime of Marx was, in his own words, to demonstrate that "In proportion as capital accumulates, the lot of the labourer must grow worse. Accumulation of wealth at one pole is at the same time accumulation of misery, agony of toil, slavery, ignorance, brutality, mental degradation at the opposite pole." But by 1867, when that volume was first pub-

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lished, Marx had known for 15 or more years that that thesis was false. His response was merely to suppress the falsifying data. Thus in the first edition of *Das Kapital* various available British statistics—about the reliability of which there was no question—were given up to 1865 or 1866, whereas those for the movement of wages stop at 1850. In the second edition all the other runs were brought up to date, while that of wage movements still stops at 1850.

Can we refrain from ending by repeating the words with which Engels himself concluded that obituary address: "*So war dieser Mann der Wissenschaft* [Such was this man of science]"? Wheen would apparently have us regard Marx as a "man of science," but the truth is quite otherwise. □

Antony Flew is emeritus professor of philosophy, University of Reading, England.

Julian Simon and the Triumph of Energy Sustainability

by Robert L. Bradley, Jr.

American Legislative Exchange Council • 2000 • 152 pages • $15.00 paperback

Reviewed by Richard W. Fulmer

Our brains are awash in sensory input. To keep our minds from becoming overwhelmed, the subconscious filters out unimportant data. Threats to survival get placed at the top of the mental inbox. Were this not so, mankind would be extinct. Imagine a caveman without such a filter ignoring the low growl behind him because his mind is occupied by the myriad benign sights, sounds, and scents around him.

It's that genetic predisposition that allows doomsayers like Paul Ehrlich to stay in the public eye despite their uninterrupted record of mistaken predictions, false claims, and tortured data. It also explains why people have paid far less attention to the optimistic views of Julian Simon.

During the three decades before his death in 1998, Simon documented the fact that in free-market countries, food and resources were steadily becoming more plentiful, pollution was decreasing, and people were living longer, healthier lives. His books, including *The Ultimate Resource* and *The Ultimate Resource 2*, proved this beyond doubt. Left unfettered, human creativity continuously overcomes seemingly insurmountable problems, leaving us all better off than before.

But bad news sells newspapers; good news is boring. So Julian Simon and his ideas were mocked or ignored. Certainly, government officials were not interested in what Simon had to say. Few politicians or bureaucrats want to admit that the best thing they can do for posterity is just to get out of the way.

In the face of such determined ignorance, Mr. Simon's ideas should have faded into obscurity, but a funny thing happened on the way to history's dustbin. Simon's predictions kept coming true. While neither truth nor utility cut much ice in academia or government, out here in fly-over country they count for a lot. When you're dealing with reality, an accurate model of how the world works is a handy thing to have around. As a result, Simon's ideas have become widely accepted by businessmen and economists.

When it became obvious to everyone outside of Harvard and Washington, D.C., that apocalypse was not just around the corner, alarmists had either to get honest work or find another crisis. It couldn't be just any crisis, of course—it had to be far enough off in the future to give a good ride, but near enough to lend a sense of urgency. It had to be difficult to disprove, and it had to be big. Really big. So big that people would naturally look to big government (guided by the doomsayers themselves, of course) for solutions—thus the ongoing global-warming scare.

Julian Simon—seeing the same people who had previously sounded such false alarms as global cooling, overpopulation, and resource depletion now pushing global warming—was immediately suspicious. The supposed disaster that we would face if we didn't slash our use of fossil fuels looked like another one of those phony scares. Alas, he would not live to see his suspicions verified.

Robert L. Bradley, Jr., president of the Institute for Energy Research and one of

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America's leading energy political economists, has taken up Simon's torch with his book, *Julian Simon and the Triumph of Energy Sustainability*. Despite its unwieldy title, the book is short and to the point, giving the reader an excellent, rigorous, and rational overview of the debate over the use of energy.

Bradley first summarizes Simon's main insights and explains how human ingenuity, the "ultimate resource," has made energy—the "master resource"—cleaner, cheaper, and more abundant. Simon foresaw no end to such creativity (provided government didn't shackle it), but not even he could predict the explosion of innovation the Internet would bring. Bradley explains how this powerful tool is helping us not only to share information but also to generate new ideas and technology. More important, the Internet is changing the ways in which we associate with one another. New and more efficient methods of doing business are evolving, and the results of this evolution will be staggering.

Next, Bradley deals with the issue of pollution. He explains that inefficiency is waste, and waste is pollution. Over the long run, competition drives industry toward greater efficiency and less waste. Thus free-market nations tend to be far cleaner than those with centrally planned economies.

The portion of the book devoted to global warming requires careful reading since the claims and counterclaims are a bit dizzying. In brief, he demonstrates that scientific analysis of the data does not support the alarmists' concerns over carbon-dioxide emissions. Nor does such an analysis provide any support for the alleged need to ratify and implement the Kyoto Protocol (which President Bush recently shelved) to reduce CO_2 emissions in developed countries. Economically, Kyoto would be a devastating blow.

Julian Simon and the Triumph of Energy Sustainability is Bradley's third book. This latest effort, though much shorter than his monumental, two-volume work, *Oil, Gas, and Government: The U.S. Experience*, should secure his reputation as the leading free-market thinker in the energy field today. □

Richard Fulmer is a systems analyst in Houston.

To America's Health: A Proposal to Reform the Food and Drug Administration
by Henry I. Miller

Hoover Institution Press • 2000 • 112 pages • $14.95 paperback

Reviewed by Daniel B. Klein

The Food and Drug Administration has a stranglehold on the introduction of new drugs, medical devices, and manufacturer-written information about products. The rationale is to assure quality and safety. Although consumers demand quality and safety assurance, the free-enterprise and tort system are supposedly unable to supply it. The way to help consumers is, of course, to deny their freedom of choice, curtail their access to information, fetter the enterprises of their trading partners, and stunt the prerogatives of their doctors, hospital workers, pharmacists, insurers, and other agents and advisers.

Almost every economist who has written about the FDA has favored reform in the libertarian direction. A stream of literature has for decades explained why massive bureaucracy and the strangulation of enterprise are no aids to quality and safety. And the literature has in several ways proved the point empirically. Yet FDA feel-good fascism persists and expands, because enlightenment is unpopular at the NBC "Nightly News."

Physician and Hoover Institution fellow Henry Miller makes a splendid contribution. He covers briefly the familiar ground, including the history of drug control, the expansion of FDA power, its procedures and practices, the perversity of its incentives and agenda (such as the bias toward withholding approvals), the damage to drug development, and the consequent death and morbidity for the American people. The book enriches understanding with several insights that come by virtue of Dr. Miller's personal qualification: He worked in the FDA's regulatory apparatus from 1979 to 1994. Thus we have in Henry Miller a medical doctor, an expert on the pharmaceutical industry, and an expert on the internal workings of the FDA itself. His personal story must be a fascinating one of dissidence and eventual defection.

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While enlightened criticism continues to hit at the exterior walls of the FDA, how do those inside respond? Not seriously. Miller writes, "[B]oxes on the organizational chart are arranged and rearranged, added and eliminated; names of entities are changed (and then changed back); and various pilot programs come and go. FDA managers avidly craft and meet new performance milestones, but there is little impact on the bottom line of timely patients' access to new therapies." FDA "reforms" are often merely the codification of old internal practices and its pronouncements are often merely criticism deflectors and public-relations exercises. When the House of Representatives in 1996 wrote a significant reform bill, the FDA and Clintonistas "pulled out all the stops to defeat it."

Miller supplies several glimpses into the banality of FDA evil. The agency is perfectly willing to lie through its institutional teeth, as was made plain in the assault on silicone breast implants. That assault killed Dow Corning, but the large pharmaceutical companies have developed "formidable regulatory affairs apparatuses [and] have become comfortable with the present system." They can beat any small outfit or newcomer in the fine art of "negotiating their way through the regulatory maze." This helps explain their complacency, though Miller also notes that companies are disinclined to antagonize their masters.

The book compares the FDA to drug-control systems in Europe, where the regulatory authorities are less Naderish in their attitudes and relationships with manufacturers. Swedish regulators know that AstraZeneca representatives from Södertälje are fellow Swedes and not bent on cheating or poisoning their customers. The drug-delay victims too are fellow Swedes, probably even second cousins. The European agencies use and trust external reviewers, cooperate with applying companies, and grant reciprocal approval across national boundaries. "The FDA, by contrast, is compliance-oriented, comports itself like a police agency—it actually has armed inspectors—and frequently treats drug companies like adversaries."

Miller understands that the demand for assurance generates opportunities for entrepreneurs to profit by supplying assurance. He says: "[O]ne might even postulate that in the complete absence of a government drug-regulating agency, market forces would spur the creation of whatever mechanisms would be required to assess and ensure pharmaceuticals' safety and efficacy. This is, after all, what *Consumer Reports*, *Consumers' Research*, J.D. Power & Associates, and other private-sector organizations do for consumer products and service industries; and Underwriters' Laboratories actually establishes standards and offers formal certification of products."

Instead of pressing a laissez-faire line, however, Miller develops a reform proposal that would attempt to institutionalize the cooperative virtues of the European systems. Drug development and application would be overseen by nongovernmental "drug certifying bodies." They would compete with one another for hire by companies developing a new drug. The hired drug-certifying body would oversee investigation, help develop the new drug application, and then make an initial decision on the application—that is, decide whether to certify the drug. The European agencies would also be permitted to serve as drug-certifying bodies. The company and its certifying body would then go together to the FDA for final approval of the new drug. The FDA, therefore, would retain final authority, but would rely on a set of trusted drug-certifying bodies, which would compete to get it right, do it quickly, and keep fees low. Under such a regime, says Miller, the FDA "becomes primarily a certifier of certifiers, rather than a certifier of products."

Miller's plan would vastly improve the situation in the United States, but one should keep in mind that it would give the FDA coercive authority over new drugs and devices, as well as hegemony over the setting of quality and safety standards and the recognition of drug-certifying bodies. There are good reasons to believe that such a system would work less well than laissez faire. Still, *To America's Health* is a useful and much-needed book. □

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Egalitarianism as a Revolt Against Nature and Other Essays

by Murray Rothbard,
edited by David Gordon

Ludwig von Mises Institute • 2000 • 321 pages • $15.00 paperback

Reviewed by George C. Leef

Young students of music, if they are at all serious about the subject, must sooner or later be introduced to Bach. Whatever else one might play or study, music without Bach would be terribly incomplete. Older musicians understand that they must introduce the rising generation to the works of the great master.

So it is also, I submit, with young students of liberty and the writings of the late Murray Rothbard. Rothbard (1926–1995), economist, philosopher, historian, and essayist par excellence, performed intellectual feats on behalf of freedom that are as vital to the literature of liberty as are Bach's preludes and fugues to the literature of the organ. In this volume, the Ludwig von Mises Institute and editor David Gordon play the role of older musician by putting back into print a tremendous collection of Rothbard's essays.

The book shows two things about Rothbard. First, the remarkable scope of his mind: the 16 essays presented here range from a devastating assault on the "women's liberation" movement to an analysis of the nineteenth-century anarchist Lysander Spooner; a dissection of the essence of the state to an argument for the rights of children. The reader cannot but marvel at the encyclopedic display of knowledge they contain.

The second characteristic is his logical consistency. Rothbard argued that the proper approach to economics was logical deduction from the fundamental principle that human beings act purposefully to achieve their objectives. His writings on economic questions hew to that idea, but so do his writings on contemporary issues. He starts from libertarian axioms and deduces the correct policy, much as one would prove a point in geometry. Rothbard is useful, then, not just for arriving at right conclusions, but also for demonstrating the *process* of thinking matters through. At a time when sloppy, emotion-laden argumentation is found almost everywhere, Rothbard is a beacon of intellectual rigor.

In a short review, I can do no more than offer up a few appetizers to entice the reader. So here goes.

The book's title essay takes dead aim at the prevalent notion that government policy ought to promote equality in any respect except equality before the law. Equality has become a default position, with every law ostensibly adopted to bring about more equality treated as presumptively good. Rothbard won't have it, arguing that egalitarianism is a *revolt against nature.* Equality is not in the natural order of things, and the crusade to make everyone equal in every respect (except before the law) is certain to have disastrous consequences. Rothbard writes, "At the heart of the egalitarian left is the pathological belief that there is no structure of reality; that all the world is a *tabula rasa* that can be changed at any moment in any desired direction by the mere exercise of human will." Learning that there is nothing sacred or lovely about forced equality—now there is a crucial lesson for any student of liberty.

Another justly famous essay included is "The Anatomy of the State." That piece stands in relation to our modern political debate as Galileo's observations about the solar system stood in relation to seventeenth-century theology. Rothbard argues brilliantly that the state is nothing more than the evolution of marauding plunderers of ancient times who realized that their plundering would be more secure and pleasant if they could convince the conquered people to willingly give up their tribute payments—that is, taxes—rather than fighting to keep the fruit of their labors all for themselves. Rothbard's discussion of the means by which rulers manage to accomplish that and thereby cement their control is by itself worth many times the price of the book.

Another crucial question Rothbard takes up more than once is the best ground for the defense of freedom. Many advocates of laissez faire base their arguments on utilitarianism, contending that we ought to get rid of (to

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pick an example) the minimum wage because it does not lead to "the greatest good for the greatest number." Rothbard disagrees. What is chiefly wrong with interventionist policies, he argues, is not that they get in the way of wealth maximization, but that they are *unjust.* Consider this passage from "Why Be Libertarian?": "[A] flourishing libertarian movement, a lifelong dedication to liberty, can only be grounded on a passion for justice. Here must be the mainspring of our drive, the armor that will sustain us in all the storms ahead, not the search for a quick buck, the playing of intellectual games or the cool calculation of general economic gains."

In these sharp, erudite pages, statist myths topple like tenpins. Buy a copy of *Egalitarianism as a Revolt Against Nature* for yourself and then buy a copy for any intelligent high-school or college student you'd like to see put on the right philosophical track. □

George Leef is the book review editor of Ideas on Liberty.

Irrational Exuberance

by Robert J. Shiller

Princeton University Press • 2000 • 296 pages • $27.95

Reviewed by David L. Littmann

It is nothing new for an author to scare his readers with predictions of economic calamity and financial collapse. During the 1970s it was Howard Ruff's *How to Prosper During the Coming Bad Years.* In the 1980s it was Gary Shilling's *After the Crash, Recession or Depression?* During the 1990s we had Ravi Batra with *Crash of the Millennium* and George Soros's *Crisis of Global Capitalism,* among others. Those are just a few predictions of economic debacles, none of which materialized.

Now enter Yale economics professor Robert Shiller with yet another market chiller, *Irrational Exuberance.* Is this the real thing? The downward plunges of the Dow and especially the NASDAQ have some people convinced that it's 1929 again.

Shiller considered the stock market to be in a very overbought condition as we entered the 21st century. He has penned a well-organized treatise on the speculative bubble that has deflated if not burst. It is instructive to follow Shiller's dirty-dozen factors that he claims contribute to unsustainable market enthusiasm.

Readers will find Shiller's treatment of the current market's vulnerability to sudden retrenchment compelling and rational. Most powerful are the author's historical references to similar periods when market optimism preceded punctured hopes and societal gloom in the wake of market smashups. But on the other hand, readers may be confounded by Shiller's generalization that "stocks are not safe"; annoyed at his omission of any reference to Washington's heavy tax and regulatory burdens, which have a strong impact on risk-reward ratios that enter into stock price valuations; and astounded at his ignorance of the debilitating effects of inflation on equity markets.

Shiller examines trends in price-earnings ratios and inflation-adjusted earnings since 1871 and compares today's peaks with the prior peaks of 1901, 1929, and 1966. Some of his conclusions and warnings certainly square with much of the conventional wisdom (for example, stay out of the market when P/Es are at or above 40). He is empirically supported by 119 years of data showing average dividend returns of 4.7 percent and average capital gains of 5.3 percent. (By contrast, today's dividends on equities average only one percent and stock valuations early in 2000 were at their highest levels in the last 150 years.)

Shiller's main point is that investor psychology is myopic and fragile. There are literally scores of shocks—political, economic, and military—that could rattle markets, both domestic and international. He reminds readers that, discounting inflation, the annual return on equities in the wake of the three aforementioned peaks was 0.2, 0.4, and 1.9 percent, respectively. And not just for a year or a decade, but for 20 years! This is a radically different perspective for some so-called investors whose long-term market expectations equate to "after lunch."

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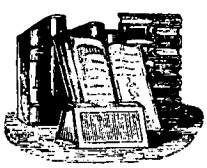
It is certainly true that human beings are prone to psychological swings and sometimes fall for bad advice from clever salesmen and financial "gurus." But since human fallibility is always present, theories about economic debacles such as depressions and market crashes need to account for the abnormally high degree of bad decisions that lead to them. Here Shiller disappoints, as he fails to observe that government policy can and has led to clusters of errors in the past and ought to take at least some of the blame in this case. We know that, owing to Alan Greenspan's worrying over the predicted "Y2K bug" cataclysm, Fed policy turned very expansionary in 1999. Inflation has been the precursor to our past economic turmoils and seems to have played a starring role in the market's run up to its early 2000 peak.

But Shiller doesn't just ignore inflation—he tries to dismiss it. He quotes former Fed chairman Arthur Burns as saying, "No country that I know of has been able to maintain widespread economic prosperity once inflation got out of hand." That statement he quickly labels "unsupported." Yet 40 centuries of recorded economic history amply support Burns's observation.

Lastly, Shiller kowtows to the old Clinton-Gore proposal that Washington direct a portion of Social Security payroll taxes into the stock market. That would bring about the de facto nationalization of U.S. equity markets and is preposterous in light of the author's warnings elsewhere about an overbought stock market and the fallibility of advice from Wall Street's self-anointed gurus. If investors are sometimes foolish with their own money, just imagine letting Washington do the investing! □

David Littmann is senior vice president and chief economist with Comerica Bank in Detroit, Michigan.



"That's Not What We Meant to Do": Reform and Its Unintended Consequences in Twentieth-Century America

by Steven M. Gillon

W.W. Norton • 2000 • 288 pages • $25.95

Reviewed by Philip Murray

The art of economics, as Henry Hazlitt might put it, is to uncover the unanticipated effects of an act. In *"That's Not What We Meant to Do,"* historian Steven M. Gillon details the history of five federal acts. He states, "My goal is fairly modest: to tell a few stories of how unintended consequences occur, to speculate about their significance, and to inspire more research and discussion about this often mentioned but infrequently explored theme." The legislation Gillon examines deals with welfare, mental illness, civil rights, immigration, and campaign finance.

Federal welfare policy begins with the Social Security Act, which included the pension for retirees and Aid to Dependent Children (ADC). Legislators did not foresee that the aging population and Congress's habit of spending surpluses in the "trust fund" would threaten old-age pensions. As for ADC, later changed to Aid to Families with Dependent Children, Gillon explains: "A program designed with destitute widows in mind was evolving into a system in which the majority of beneficiaries were mothers who had never married or had been divorced." An unintended consequence with very serious results.

The purpose of the Civil Rights Act of 1964 was to eliminate segregation. Gillon quotes Hubert Humphrey on quotas: "In effect, [Title VII] says that race, religion and national origin are not to be used as the basis for hiring and firing." Then Humphrey made his famous challenge: if his colleague could show him where Title VII forced employers to adopt quotas, he would consume the paper. In 1971, however, the Supreme Court decided that employment statistics were adequate proof of discrimination. "The Court insisted that the ruling did not require strict quotas," Gillon

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writes, "but by declaring suspect any employment standard that resulted in racial imbalance, the justices gave a powerful incentive to employers to use a proportional quota system." Unintended consequence: employers adopted quotas to protect themselves from lawsuits over statistical disparities.

The Federal Election Campaign Finance Reform Act Amendments of 1974 were expected to destroy the influence of large contributors. The lofty-sounding goal was to "clean up politics and reinvigorate public faith in government." Neither objective was accomplished, but there have been plenty of unintended consequences. One was the rise of the political action committee (PAC). Office seekers could gather only limited donations from individuals; thus they used PACs to raise funds. Restrictions on campaign finance also caused candidates to spend more time seeking contributions. Thus incumbents spend less time serving their constituents and challengers spend less time differentiating themselves on the campaign trail. As for restoring "public faith" in democracy, the percentage of citizens who vote has continued to fall.

The author draws this lesson: "At the heart of the problem of unanticipated consequences in the United States is a paradox: Americans look to Washington for solutions to complex problems, but they are reluctant to give government the power it needs to address most issues." Sorry, Professor Gillon, but the problem of unintended consequences does not arise from an insufficiency of government power. Coercive interference in human action invariably leads to unintended—and undesirable—consequences. More government power to interfere will just lead to more unintended consequences (and demands for more power).

So a book that appears to make a decisive argument against social engineering ends with interventionist blather: "I would not want readers to conclude from these examples that we must abandon our efforts to identify social problems or suspend efforts to use government as a positive force for social change." I suggest that Gillon learn some economics, then revisit the subject of unintended consequences. □

Philip Murray is a professor of economics at Webber College in Babson Park, Florida.

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IDEAS ON LIBERTY
JULY 2001

Lifestyle Nazi Update

"We are not doing the same kind of things with obesity that we have done with smoking and alcohol as far as the government is concerned. It's got to be like smoking, a constant drumbeat." That's former Surgeon General C. Everett Koop, appearing on CNN, January 11, 2000, calling for the nation's lifestyle Nazis to attack fat people as they attacked smokers.

Lifestyle Nazis aren't settling on just obesity, they're targeting meat consumption. Dr. Neal Barnard, president of Physicians Committee for Responsible Medicine, says, "It's time we looked at holding the meat producers and fast-food outlets legally responsible. Meat consumption is just as dangerous to public health as tobacco use." Doing their part to ban meat consumption, professors at law schools such as Harvard, Rutgers, and Georgetown are teaching "animal law" courses. Animals are seen as plaintiffs. Law professors are gearing up by studying old slavery statutes that authorized legal nonpersons to bring lawsuits. Possibly, before long, we might see chickens, cows, pigs, and other critters appearing as plaintiffs in court suing for crimes against animals.

Morgan Leyh, a member of People for the Ethical Treatment of Animals (PETA) says, "Eating meat is a rich versus poor issue. The rich get fat on meat, while the poor are starving because all the grain is fed to cattle. It's selfish to eat meat—there is no excuse for eating meat." So far as America's poor are concerned, that claim reflects unadulterated stupidity. American obesity is mostly a health problem of poor people. But stupidity and callousness are par for the course for PETA. It was PETA president Ingrid Newkirk who said the slaughter of millions of chickens is a greater tragedy than the Nazi holocaust. She also said that a boy is no more valuable than a clam. PETA has fellow travelers. Guest Choice (www.guestchoice.com) cites one of them, Paul Shapiro, a member of Compassion Over Killing, as saying, "Animals are the most oppressed group on the face of the planet. Eating meat is unethical—it is not your right to say an animal's life is worth a pleasant taste sensation in your mouth."

Suppose we didn't slaughter cows for their meat but, instead, just drank their milk? We wouldn't be off the hook; there are anti-milk Nazis. Robert Cohen, a.k.a. "Not milk Man," director of the Anti-Dairy Coalition, says that there is "no nutritional value to drinking milk." He advises that bone disease is caused by dairy consumption and predicts that we would all live to be 100 years or more were it not for Monsanto's genetically modified milk.

Then there's a California organization parading under the lofty name Beverly Hills Consumers for Informed Choice, which gathered enough petition signatures, including celebrities Jack Lemmon, Jay Leno, Vidal Sassoon, Pat Boone, and Sid Caesar, to force the Beverly Hills City Council to call an elec-

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tion. The purpose of the election was for voters to decide whether to enact an ordinance mandating that all fur goods, with a value greater than $50, bear a warning label that reads: "Consumer Notice: This product is made with fur from animals that may have been killed by electrocution, gassing, neck-breaking, poisoning, clubbing, stomping or drowning and may have been trapped in steel-jaw leg hold traps." (Fortunately, voters defeated the proposal.)

It's easy to dismiss these people "as only wanting to help" or as having only "limited goals." Nonsense. I know of no instances where a tyrant has arisen one day and said, "I'm tired of tyrannizing people and I'll tyrannize no more." Tyrants have insatiable appetites. Their methodology is incrementalism; confiscating rights in large chunks creates too much resistance. Incrementalism was the strategy of the cigarette Nazis. When they started out, they only wanted nonsmoking sections on airplanes. After that success, they called for no smoking on flights under 500 miles; after that success they demanded no smoking on airplanes at all. Emboldened by those successes, they demanded no smoking in airports and in some cases not within 40 feet of the airport entrance. Then using EPA-sponsored bogus science about the health effects of "secondhand smoke," they managed to get smoking banned in workplaces, restaurants, hotels, California bars, and in Friendship Heights, Maryland, on the street. That law was later struck down in court. Had the cigarette Nazis revealed their complete agenda when they started out, they would have had little or no success.

Americans who've demanded government subsidized health care have been unwitting dupes, or as Comintern called those types, "useful idiots," for America's lifestyle Nazis. We've given them excuses to interfere with every aspect of our lives in the name of health-care costs. If a behavior impacts health-care costs, today's lifestyle Nazi is Johnny-on-the-spot with a proposal to regulate that behavior.

Here's my wager: I bet the lifestyle Nazis are also strong proponents of piecemeal repeal of our Second Amendment guarantees. Why? They want us to be defenseless. If, for example, C. Everett Koop wants me to stop eating meat and Robert Cohen wants me to stop drinking milk, let them physically stop me. I doubt they would risk the possibility of grave bodily injury. They're cowards. So instead they want to enlist Congress and the courts to go after weak sisters—America's restaurant owners and businessmen.

Many of us mistakenly label these people "nannies," an inappropriate term for those who'd use the coercive, brutal powers of government to impose their values on others. More fitting labels are: tyrants, totalitarians, and yes, Nazis. □

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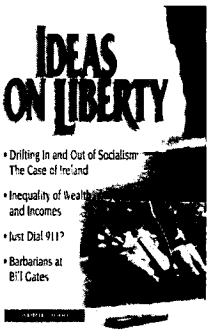
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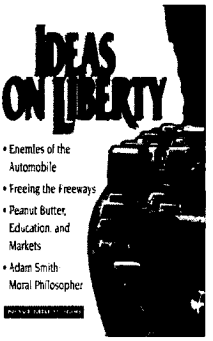
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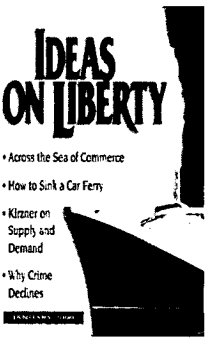

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